2970 No. 15099

United States

Court of Appeals

for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

INTERNATIONAL ASSOCIATION OF MACHINISTS, GUIDED MISSILE LODGE 1254,
Respondent.

Transcript of Record

Petition for Enforcement of An Order of the National Labor Relations Board

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif. —6-22-56

No. 15099

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NATIONAL LABOR RELATIONS BOARD,
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Transcript of Record

Petition for Enforcement of An Order of the National Labor Relations Board

GENERAL COUNSEL'S EXHIBIT No. 1-A

United States of America
National Labor Relations Board

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

Case No.: 21-CB-561. Date Filed: 2/1/54.

1. Labor Organization or its Agents Against Which Charge Is Brought: Name: International Association of Machinists, Guided Missile Lodge 1254.

Address: 637 W. 2nd Street, Pomona, California.

The above-named organization or its agents has engaged in and is engaging in unfair labor practices within the meaning of Section (8b) Subsections 1 (A) and (2) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge:

The above-named labor organization, acting through its officers, agents, or employees, on or about January 15, 1954, caused or attempted to cause an employer, Consolidated Vultee Aircraft Corporation, Guided Missile Division, Pomona, California, to discharge the undersigned in violation of Section 8 (b) (2).

By these and by other acts, said labor organization, acting through its officers, agents, and employ-

ees, restrained or coerced employees, including the undersigned, in the exercise of the rights guaranteed in Section 7 of the Act.

3. Name of Employer: Consolidated Vultee Aircraft Corporation, Guided Missile Division.

4. Location of Plant Involved: P. O. Box 1011, Pomona, California.

5. Nature of Employer's Business: Mfg. Guided Missiles.

6. No. of Workers Employed: 3000.

7. Full Name of Party Filing Charge: Charles E. Pense.

8. Address of Party Filing Charge: 190 W. Kingsley Ave., Pomona, California.

9. Declaration: I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

/s/ By C. E. PENSE,
An Individual

February 1, 1954.

Affidavit of Service by Mail and Return Postal Receipts Attached.

GENERAL COUNSEL'S EXHIBIT No. 1-B

United States of America
National Labor Relations Board

CHARGE AGAINST EMPLOYER

Case No.: 21-CA-1911. Date Filed: 2/1/54.

1. Employer Against Whom Charge Is Brought: Name of Employer: Consolidated Vultee Aircraft Corporation, Pomona Division.

Number of Workers Employed: 3000.

Address of Establishment: P. O. Box 1011, Pomona, California.

Type of Establishment: Factory.

Identify principal product or service: Guided Missile.

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a), Subsections (1) and (3) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge:

On or about January 15, 1954, the above named employer, acting through his officers, agents, or employees, discharged the undersigned in violation of Section 8 (a) (3).

By these and other acts the above named employer, acting through his officers, agents, and em-

ployees, interfered with, restrained, or coerced employees, including the undersigned, in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge: Charles E. Pense.

4. Address: 190 W. Kingsley Ave., Pomona, California.

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit: (An Individual).

* * * * *

7. Declaration: I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

/s/ By C. E. PENSE,
An Individual

February 1, 1954.

Affidavit of Service by Mail and Postal Return Receipts Attached.

GENERAL COUNSEL'S EXHIBIT No. 1-E

United States of America
Before the National Labor Relations Board
Twenty-First Region

Case No. 21-CA-1911

In the Matter of

CONSOLIDATED VULTEE AIRCRAFT CORPORATION, POMONA DIVISION,

and

CHARLES E. PENSE, An Individual.

Case No. 21-CB-561

In the Matter of

INTERNATIONAL ASSOCIATION OF MACHINISTS, GUIDED MISSILE LODGE 1254

and

CHARLES E. PENSE, An Individual.

ORDER CONSOLIDATING CASES AND NOTICE OF HEARING

The General Counsel for the National Labor Relations Board having duly considered the matter and deeming it necessary in order to effectuate the purposes of the National Labor Relations Act, as amended, and to avoid unnecessary costs or delay,

Hereby Orders, pursuant to Section 102.33 (b) of the National Labor Relations Board Rules and Reg-

ulations, Series 6, as amended, that these cases be, and they hereby are, consolidated.

Please Take Notice that on the 24th day of May, 1954, at 10:00 a.m., in Room 704, 111 West Seventh Street, Los Angeles, California, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Consolidated Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Copies of the Charges upon which the Consolidated Complaint is based are attached hereto.

You are further notified that, pursuant to Section 102.15 of the Board's Rules and Regulations, you shall file with the undersigned Acting Regional Director, acting in this matter as agent of the National Labor Relations Board, an answer to the said Consolidated Complaint within ten (10) days from the service thereof and that unless you do so all of the allegations in the Consolidated Complaint shall be deemed to be admitted as true and may be so found by the Board.

In Witness Whereof, the General Counsel of the National Labor Relations Board, on behalf of the Board, has caused this Consolidated Complaint and Order Consolidating Cases and Notice of Hearing to be signed by the Acting Regional Director for the Twenty-First Region on this 30th day of April, 1954.

[Seal] /s/ GEO. A. YAGER,
Acting Regional Director, National Labor Relations Board, Twenty-First Region.

Affidavit of Service by Mail and Return Postal Receipts Attached.

GENERAL COUNSEL'S EXHIBIT No. 1-F

[Title of Board and Cause.]

CONSOLIDATED COMPLAINT

It having been charged by Charles E. Pense, hereafter called Pense, that Consolidated Vultee Aircraft Corporation, Pomona Division, hereafter called the Company, and International Association of Machinists, Guided Missile Lodge 1254, hereafter called the Union, have engaged in and are engaging in unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, Public Law 101, 80th Congress, First Session, hereinafter called the Act, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for the Twenty-First Region, designated by the Board's Rules and Regulations, Series 6, as amended, Section 102.15, hereby issues this Consolidated Complaint and alleges as follows:

1. The Company is a division of Consolidated Vultee Aircraft Corporation, a Delaware corporation which is engaged in the manufacture, development, design and sale of military and commercial aircraft (including guided missiles), aircraft parts

and accessories in San Diego, California, Pomona, California, Fort Worth, Texas, and various other locations throughout the United States, and which is one of the largest aircraft manufacturing corporations in the United States. The Company is engaged in the manufacture of guided missiles for the armed forces of the United States and, during the past fiscal year, purchased raw materials and supplies valued in excess of $1,000,000 outside the State of California. The operations of the Company and of Consolidated Vultee Aircraft Corporation have a substantial effect on national defense.

2. The Company and Consolidated Vultee Aircraft Corporation are, and at all times material herein have been, engaged in commerce within the meaning of Section 2, subsections (6) and (7) of the Act.

3. The Union is a labor organization within the meaning of Section 2, subsection (5) of the Act.

4. During the period from August 1, 1953, until on or about February 1, 1954, the Company and the Union continued in effect and enforced a provision of a previously concluded collective bargaining contract which read in part as follows:

"Article XIV

Union Security

"Section 1. Any employee within the bargaining unit who, on the effective date of this agreement, is a member of the Union in good standing, and each

employee within the bargaining unit who thereafter becomes a member of the Union shall pay while on the Company's active payroll and a member of the Union, initiation fees, monthly dues and general assessments levied by the International Association of Machinists, Guided Missile Lodge No. 1254, in accordance with the constitution and by-laws of the Union as a condition of employment while in the bargaining unit, provided that in no event shall the initiation fee, monthly dues or general assessment exceed the amount specified in the constitution and by-laws; and each employee who, after the effective date of this agreement, is separated from the bargaining unit and who at such time is subject to the provisions of this section shall, upon rehire within the bargaining unit, again pay regular dues to the Union commencing with the date of rehire; provided, further, that any employee may withdraw from membership in the Union by notifying the Union and the Company by registered mail, postmarked between August 1 to August 15 of the then currently effective yearly period.

"Section 2. No employee, as a condition of employment while in the bargaining unit, shall be required to pay while on the Company's active payroll any Union membership dues, fees or general assessments covering any period during which the employee was not in the bargaining unit or was not on the Company's active payroll.

"Section 3. Any employee subject to the provisions of Section 1 above, who is thereafter separated

from the bargaining unit, shall upon his re-employment in a job within the bargaining unit again pay membership dues to the Union in accordance with Section 1 above, unless such employee has withdrawn from membership with the Union in accordance with this Article."

5. On or about December 1, 1953, the Union canceled the membership of Pense in the Union allegedly for the reason that Pense was delinquent in his payment of dues to the Union for more than 3 months, and on or about January 14, 1954, and continuously since that date, the Union has refused to reinstate him to membership in the Union. During the period from on or about September 1, 1953, to on or about January 1, 1954, the Union failed to cancel the membership in the Union of other employees of the Company who were delinquent in their dues payments to the Union for more than 3 months, and during the period from on or about December 1, 1953, to on or about February 1, 1954, reinstated to membership in the Union other employees of the Company who were delinquent in their dues payments to the Union for more than 3 months. This disparity between the treatment accorded by the Union to Pense and the treatment accorded by the Union to said other employees was due to the fact that Pense had assisted other employees of the Company to prepare, in accordance with the provisions of the contract then in effect between the Company and the Union, revocations of their previously given authorizations to the Company to deduct their union dues, initiation fees and assessments from their pay.

6. On or about December 7, 1953, the Union requested and demanded of the Company to discharge Pense from its employment, and since that date the Union has persisted in its request and demand not to reinstate or reemploy Pense, these requests and demands allegedly being predicated on the reason that Pense was delinquent in his payment of dues to the Union and had forfeited his membership in the Union.

7. On or about January 15, 1954, the Company acceded to said request and demand of the Union and discharged Pense from its employment, and, since that date, the Company, acceding to the Union's request and demand, has refused, and continues to refuse, to reinstate or reemploy Pense for the sole reason that the Union had requested and required his discharge.

8. By the acts and conduct set forth in paragraph 4 the Company continued in effect and enforced a contractual provision which makes the payment of assessments a condition of employment and which requires as a condition of employment in respect to certain employees of the Company membership in the Union prior to the thirtieth day following the beginning of their employment or reemployment in a job within the bargaining unit and prior to the thirtieth day following the effective date of the contract, which contractual provision is therefore in violation of Section 8 (a) (3) of the Act, and the Company thereby discriminated in regard to tenure of employment to encourage membership in

the Union and interfered with, restrained and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act and thus engaged in unfair labor practices within the meaning of Sections 8 (a) (1) and 8 (a) (3) of the Act.

9. By the acts and conduct set forth in paragraph 4 the Union continued in effect and enforced a contractual provision which makes the payment of assessments a condition of employment and which requires as a condition of employment in respect to certain employees of the Company membership in the Union prior to the thirtieth day following the beginning of their employment or reemployment in a job within the bargaining unit and prior to the thirtieth day following the effective date of the contract, which contractual provision is therefore in violation of Section 8 (a) (3) of the Act, and the Union thereby caused the Company to discriminate against employees in violation of Section 8 (a) (3) of the Act, and restrained and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act and thus engaged in unfair labor practices within the meaning of Sections 8 (b) (1) (A) and 8 (b) (2) of the Act.

10. By making and persisting in the requests and demands set forth in paragraph 6, while there was not in effect between the Company and the Union, a valid and lawful contractual provision requiring membership in the Union as a condition of employment, the Union caused, and is now causing, an employer to discriminate against an employee in viola-

tion of Section 8 (a) (3) of the Act, and restrained and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, and it thereby engaged, and is now engaging, in unfair labor practices within the meaning of Sections 8 (b) (2) and 8 (b) (1) (A) of the Act.

11. By making and persisting in the requests and demands set forth in paragraph 6, while, as set forth in paragraph 5, according Pense treatment disparate from that accorded other employees of the Company, the Union caused, and is now causing, an employer to discriminate against an employee to whom membership in the Union was not available on the same terms and conditions generally applicable to other members and with respect to whom membership in the Union has been terminated and denied on grounds other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership, and restrained and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, and the Union thereby engaged, and is now engaging, in unfair labor practices within the meaning of Sections 8 (b) (2) and 8 (b) (1) (A) of the Act.

12. By acceding to the requests and demands of the Union and discharging Pense, as set forth in paragraph 7, while there was not in effect between the Company and the Union a valid and lawful contractual provision requiring membership in the Union as a condition of employment, the Company discriminated, and is now discriminating, against an

employee in tenure of employment to encourage membership in the Union, and interfered with, restrained and coerced, and is now interfering, restraining and coercing, employees in the exercise of the rights guaranteed in Section 7 of the Act, and it thereby engaged, and is now engaging, in unfair labor practices within the meaning of Sections 8 (a) (1) and 8 (a) (3) of the Act.

13. The acts and conduct of the Company and of the Union set forth and described in paragraphs 4 through 12 above, occurring in connection with the business of the Company as described above, have a close, intimate and substantial relation to commerce as defined in Section 2, subsection (6) of the Act and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce as defined in Section 2, subsection (7) of the Act.

14. The acts and conduct of the Company and of the Union set forth and described in paragraphs 4 through 12 above, occurring in connection with the business of the Company as described above, constitute unfair labor practices affecting commerce within the meaning of Section 8 (a), subsections (1) and (3), Section 8 (b), subsections (1) (A) and (2), and Section 2, subsections (6) and (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Acting Regional Director for the Twenty-First Region, this 30th day of April, 1954, issues this Con-

solidated Complaint against the Company and the Union.

[Seal] GEO. A. YAGER,
Acting Regional Director, National Labor Relations Board, Twenty-First Region.

Affidavit of Service by Mail and Postal Return Receipts Attached.

GENERAL COUNSEL'S EXHIBIT No. 1-L

[Title of Board and Cause.]

ANSWER TO COMPLAINT BY RESPONDENT UNION

Comes now the International Association of Machinists for itself and in behalf of its Guided Missile Lodge 1254, Respondent Union, in the above entitled matter with its answer to the allegations set forth in the Consolidated Complaint.

In general, the Respondent Union denies each and every, any and all, allegations or charges that it has or that it is engaged in unfair labor practices either by itself or in collusion with or in cooperation with Respondent Employer.

The Union answers hereinafter the itemized and numbered allegations in the Consolidated Complaint in the same order, identifying the answer by the same numeral used in the Complaint as follows:

1. The Union is without accurate knowledge as to the financial and manufacturing data of the Company, and is, therefore, unable to admit or deny the

allegations in Paragraph 1 of the Consolidated Complaint.

2. The Union for the reason set forth in 1 above denies the allegations of commerce—in so doing, however, we do not raise the question of jurisdiction of the Board as defense.

3. The Union admits it is a Labor Organization within the meaning of Section 2, Subsection (5) of the Act.

4. The Union admits that its Collective Bargaining Agreement with Respondent Company contained the provisions as alleged.

5. The Union denies the allegations, implications, and distortions of facts set forth in this Paragraph of the Complaint, and denies generally and specifically the conclusions drawn by the General Counsel from the alleged facts.

The Union admits that Pense automatically cancelled his membership including all his rights, privileges, and benefits derived therefrom in accordance with the laws of the Union by reason of his failure to pay the dues uniformally required prior to December 1, 1953.

The ambiguous allegations by the General Counsel contained in the sentence:

"During the period from on or about September 1, 1953, to on or about January 1, 1954, the Union failed to cancel the membership in the Union of other employees of the Company who were delinquent in their dues payments to the Union for more than 3 months, and during the period from on or about December 1, 1953, to on or about February

1, 1954, reinstated to membership in the Union other employees of the Company who were delinquent in their dues payments to the Union for more than 3 months."

poses a serious question for Respondent Union because we do not know, what members, if any so exist, as described, the General Counsel is referring to, nor can we ascertain what disparity exists for what reasons until and unless we know what members the General Counsel refers to and relies on to support his allegations.

6. The Union admits that it requested the discharge of Pense in accordance with the terms and provisions of the Agreement between the Company and the Union then in effect, and denies that it has persisted and demanded that the Company decline to reinstate and re-employ Pense for any reason whatsoever.

7. The Union believes that Pense was terminated on or about January 15, 1954, but denies that any actions by the Company since that time in connection with Pense is in any manner related to a Union request or demand. Respondent Union denies that it has knowledge of the Company's motives or reasons for any acts performed by the Company.

8. & 9. The Union denies generally and specifically all the allegations, implications, and conclusions that the Company or the Union in any way, manner, or form violated any section of the Act and averse by way of an affirmative defense that a valid and legal agreement was in force and effect and that the question of an assessment is not

an issue in this case; that all acts by either the Company or the Union in connection with the termination of Pense was proper and legal in all respects.

10. The Union denies generally and specifically that it has caused the Company to discriminate against Pense or any other employee, or that it caused any violation of any section of the Act.

11. The Union is without knowledge as to what disparite treatment the General Counsel is referring to or relying on as the basis of any allegations of discrimination, and urges that disparite treatment as such is not per se violative of the Act.

The Union denies any and all allegations, implications, or conclusions that infer that membership in the Union was not available on the same terms and conditions generally applicable to other members or persons who have been similarly classified or are similarly situated, or infer that Pense was terminated on grounds other than his failure to tender the periodic dues and initiation fees uniformally required as a condition of acquiring or retaining membership. The Union denies that it has in any way violated Section 8 (b) (2) and 8 (b) (1) (A) of the Act.

12. The Union denies that it has any knowledge of any acts by the Company that would be violative of Section 8 (a) (1) and 8 (a) (3) of the Act.

13. The Union denies that the acts and conduct described in Paragraphs 4 through 12, even if true, would have an intimate and substantial relations to commerce or that it would lead or tend to lead to

labor disputes that would burden or obstruct commerce or the free flow of commerce.

14. The Union denies that any or all of the allegations, implications, or conclusions advanced by the General Counsel in the Complaint as a whole constitutes unfair labor practices which have any effect whatsoever upon commerce within any sections of the Act.

Respectfully submitted,

/s/ A. C. McGRAW,

Grand Lodge Representative, International Association of Machinists, for Itself and in Behalf of Its Subordinate Local Lodge 1254.

Duly verified.

Proof of Service by Mail Attached.

GENERAL COUNSEL'S EXHIBIT No. 1-M

[Title of Board and Cause.]

ANSWER OF RESPONDENT

The Respondent answering the complaint herein, hereby admits, avers and denies, as follows:

I.

Answering paragraphs 1 and 2 of the Complaint herein, the Respondent, General Dynamics Corporation, admits the allegations therein contained in so far as said allegations relate to the business and affairs of its Convair Division and specifically avers as follows:

Consolidated Vultee Aircraft Corporation for a number of years up to April 30, 1954, was primarily engaged in the manufacture, development, design and sale of military and commercial aircraft, missiles, aircraft parts and accessories. The General Offices of Consolidated Vultee Aircraft Corporation were located at San Diego, California, with various manufacturing Divisions located as follows:

Pomona Division—Pomona, California
San Diego Division—San Diego, California
Fort Worth Division—Fort Worth, Texas
Daingerfield Division—Daingerfield, Texas

Effective as of the close of business April 30, 1954, Consolidated Vultee Aircraft Corporation, a Delaware corporation, merged with and into General Dynamics Corporation, a Delaware corporation, the surviving corporation to be known as General Dynamics Corporation. Said merger was effected in accordance with the Statutes of the State of Delaware and resulted in the transfer of all Consolidated Vultee Aircraft Corporation rights, privileges, business, property, assets, etc., to, and the assumption of all Consolidated Vultee Aircraft Corporation obligations and liabilities by, General Dynamics Corporation. Following said merger the activities and business of Consolidated Vultee Aircraft Corporation were, by resolution of the Board of Directors, designated as "Convair, a Division of General Dynamics Corporation". The activities and business of Convair, a Division of General Dynamics Corporation (hereinafter called "Convair") con-

tinued uninterrupted the same after the aforesaid merger. The General Offices of Convair continued and are now located at San Diego, California, and so far as the subject matter of this action is concerned the various operating divisions of Convair continue in all respects the same.

Specifically, Convair's Pomona division, between January 1, 1954 and June 30, 1954, purchased raw materials and supplies valued in excess of $5,000,000.00. In excess of 75% of such raw materials and supplies were purchased from suppliers located outside the State of California and shipped by said suppliers to Pomona, California. During this same period sales of the said Pomona division exceeded the dollar value of $18,000,000.00. Approximately 99% of such sales were made to the Government and ultimately shipped outside the State of California.

Respondent admits that its Convair Division is the same business operation as that referred to in the complaint as "Consolidated Vultee Aircraft Corporation."

The Pomona division of Convair is engaged in commerce within the meaning of Section 2, subsections (6) and (7) of the National Labor Relations Act.

II.

Answering paragraph 3 of the Complaint herein, Respondent is without specific knowledge or information as to allegations therein contained, but based upon its information and belief admits the Interna-

tional Association of Machinists, Guided Missile Lodge 1254 is a labor organization within the meaning of Section 2, subsection (5) of the National Labor Relations Act.

III.

Answering paragraph 4 of the Complaint herein, Respondent admits the allegations therein contained.

IV.

Answering paragraph 5 of the Complaint herein, Respondent denies any knowledge of or responsibility for any alleged disparity of treatment by the International Association of Machinists, Guided Missile Lodge 1254 to Charles E. Pense; Respondent makes no further answer to paragraph 5 of the Complaint herein since no statements or allegations therein contained refer to acts of Respondent.

V.

Answering paragraph 6 of the Complaint herein, Respondent admits that on or about December 8, 1953, it received the following written request from the International Association of Machinists, Guided Missile Lodge 1254:

"The International Assn. of Machinists Guided Missile Lodge 1254 is hereby notifying Consolidated Vultee Aircraft Corp. Pomona Division, co-signers of the present contract between the union and the company; that former Union Members, D. M. Ainsworth Department 25 Clock Number 10341 and C. E. Pense, Department 27 Clock Number 70053,

have not complied with said contract, as a Condition of Employment. Therefore in compliance with the Constitution of the International Assn. of Machinists have been dropped from this local.

"The union will await your compliance to the above subject set forth."

that on or about December 17, 1953, Respondent received the following written request from said Lodge 1254;

"The International Association of Machinists Guided Missile Lodge #1254 is hereby notifying Consolidated Vultee Aircraft Corp., Pomona Division, co-signers of the present contract between the Union and the company, that former Union members, D. M. Ainsworth, Department 25, Clock Number 10341 and C. E. Pense, Department 27, Clock Number 70053, are not in compliance with Article XIV of our Agreement in that they have been dropped from membership of our Association because of non-payment of dues in accordance with the Constitution and By-Laws of our Union.

"We, therefore, request the company to immediately terminate the above employees in accordance with the terms of our Agreement."

that on or about January 15, 1954, Respondent received the following written request from said Lodge 1254;

"In regards to the letter sent to you dated December 17, 1953 in which Guided Missile Lodge

1254, International Association of Machinists asked you to terminate former Union Members, D. M. Ainsworth and C. E. Pense as a Condition of Employment in accordance with the terms of our Agreement.

"I wish to advise you that action was taken by the membership of this lodge at the last meeting held January 14, 1954 and the decision set forth which is in accordance with the Constitution and By-Laws of our Union as follows:

"D. A. Ainsworth, Application accepted and Reinstated as a member in good standing. Termination Request Cancelled.

"C. E. Pense, Application rejected by the membership. Termination requested as per letter dated December 17, 1953"

VI.

Answering paragraph 7 of the Complaint herein, Respondent admits that on January 15, 1954 it discharged Charles E. Pense at the request of the International Association of Machinists, Guided Missile Lodge 1254, and upon its representation that said Charles E. Pense had declined and failed to pay Union dues in compliance with Article XIV of the collective bargaining agreement then in effect between the Respondent and said Lodge 1254; Respondent further admits that since January 15, 1954 it has refused to reinstate Charles E. Pense for the sole reason that said Lodge 1254 had requested it to discharge Charles E. Pense because of his failure to pay Union dues in compliance

with Article XIV of the collective bargaining agreement then in effect between the Respondent and said Lodge 1254.

VII.

Answering paragraph 8 of the Complaint herein, Respondent denies that its conduct set forth in paragraph 4 is in violation of Section 8(a)(3) of the National Labor Relations Act and further denies that it thereby discriminated in regard to tenure of employment to encourage membership in a Union and interfered with, restrained and coerced employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act and thus engaged in unfair labor practices within the meaning of Section 8(a)(1) and 8(a)(3) of the National Labor Relations Act.

VIII.

Answering paragraph 9 of the Complaint herein, Respondent denies the premise upon which the allegations thereof are based, i.e. that the provisions of the collective bargaining agreement in effect between Respondent and International Association of Machinists, Guided Missile Lodge 1254 were and are in violation of the National Labor Relations Act; Respondent makes no further answer to paragraph 9 of the Complaint herein since no statements or allegations therein contained refer to acts of Respondent.

IX.

Answering paragraph 10 of the Complaint herein,

Respondent denies the premise upon which the allegations thereof are based, i.e. that in December of 1953 there was not in effect between Respondent and International Association of Machinists, Guided Missile Lodge 1254 a valid and lawful collective bargaining agreement; Respondent makes no further answer to paragraph 10 of the Complaint herein since no statements or allegations therein contained refer to acts of Respondent.

X.

Respondent makes no answer to paragraph 11 of the Complaint herein since no statements or allegations therein contained refer to acts of Respondent.

XI.

Answering paragraph 12 of the Complaint herein, Respondent admits that it discharged Charles E. Pense on January 15, 1954, pursuant to the request of the International Association of Machinists, Guided Missile Lodge 1254 upon its representation said Charles E. Pense had declined and failed to pay Union dues in compliance with Article XIV of the collective bargaining agreement then in effect between Respondent and said Lodge 1254; Respondent denies the allegation that there was not in effect between the Company and the Union at that time a valid and lawful contractual provision requiring employees within the bargaining unit who, on the effective date of the agreement, were members of said Lodge 1254 in good standing, to pay

monthly dues to said Lodge 1254 in accordance with the constitution and by-laws of said Lodge 1254, and that same should be a condition of employment while said employees were in the bargaining unit; Respondent further denies that in discharging Charles E. Pense on January 15, 1954, it discriminated, and is now discriminating, against an employee in tenure of employment to encourage membership in said Lodge 1254, and interfered with, restrained and coerced, and is now interfering, restraining and coercing, employees in the exercise of the rights guaranteed in Section 7, of the National Labor Relations Act, and thereby engaged in, and is now engaging, in unfair labor practices within the meaning of Sections 8(a)(1) and 8(a)(3) of the National Labor Relations Act.

XII.

Answering paragraph 13 of the Complaint herein, Respondent denies that its acts and conduct set forth and described in paragraphs 4 through 12 of the Complaint herein, have led and tend to lead to labor disputes as therein alleged.

XIII.

Answering paragraph 14 of the Complaint herein, Respondent denies that its acts and conduct set forth and described in paragraphs 4 through 12 of the Complaint herein, constitute unfair labor practices affecting commerce within the meaning of Section 8(a), subsections (1) and (3), Section 8(b),

subsections (1)(A) and (2), and Section 2, subsections (6) and (7) of the National Labor Relations Act.

XIV.

Respondent further avers that the collective bargaining agreement referred to in paragraph 4 of the Complaint herein in effect during the period from August 1, 1953 until on or about February 1, 1954, was entered into by Respondent and International Association of Machinists, Guided Missile Lodge 1254 in good faith with the intent that same should be consistent with the concept and purposes of the National Labor Relations Act and not in violation thereof. Specifically, the provisions of said agreement pertinent to the discharge of Charles E. Pense, alleged in the Complaint herein to have been discharged in violation of the National Labor Relations Act, required employees within the bargaining unit covered, who on the effective date of said agreement were members of said Lodge 1254 in good standing, to pay while on the Company's active payroll and a member of the Union, monthly dues levied by the said Lodge 1254 in accordance with its constitution and by-laws.

Respondent further avers that Charles E. Pense was employed by it during all times mentioned in the Complaint herein and until January 15, 1954, that he was within the bargaining unit covered by said collective bargaining agreement and was a member of said Lodge 1254 on the effective date of said agreement.

Respondent further avers that it was advised by said Lodge 1254 in writing prior to January 15, 1954 that Charles E. Pense had failed to pay reasonable Union dues in accordance with the constitution and by-laws of said Lodge 1254 and in fact was far in arrears in the payment of such dues and, pursuant to request of said Lodge 1254, Respondent did on the 15th day of January, 1954, discharge Charles E. Pense for the reason that he had failed to pay reasonable Union dues in accordance with the constitution and by-laws of said Lodge 1254 in compliance with the said collective bargaining agreement then in effect, and for no other reason.

Wherefore, Respondent requests that the Complaint herein be dismissed in so far as its alleges and charges acts on the part of Respondent in violation of the National Labor Relations Act.

Dated: July 9, 1954.

GENERAL DYNAMICS
CORPORATION

By.....

Robert B. Watts,
Vice President and General Counsel,
Convair Division.

[Title of Board and Cause.][1]

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Ernest L. Heimann, for the General Counsel. Robert B. Watts and C. C. Sawyer, of San Diego, Calif., and Harlan Filloon, of Pomona, Calif., for the Respondent Corporation. A. C. McGraw, of Los Angeles, Calif., for the Respondent Union.

Before: James R. Hemingway, Trial Examiner.

Statement of the Case

Upon charges filed by Charles Pense against Consolidated Vultee Aircraft Corporation, Pomona Division, now known as General Dynamics Corporation, Convair Division (Pomona), herein called the Company, and against International Association of Machinists, Guided Missile Lodge 1254, herein called the Union, a consolidated complaint was issued on April 30, 1954, by the Acting Regional Director for the Twenty-first Region of the National Labor Relations Board, herein called the Board, on behalf of the General Counsel for the Board, alleging violations by the Company of Section 8 (a) (1) and (3), and by the Union of Section 8 (b) (1) (A)

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[1] The complaint was amended on motion made and granted at the hearing to reflect the change in the name of the Respondent Corporation. It is now known as General Dynamics Corporation, Convair Division (Pomona), but as all the records of the case have been set up under the original name, I have retained the original caption for convenience.

and (2) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. The respective respondents were served with copies of the charges against them, copies of the complaint, and notice of hearing.

In substance the complaint alleges that during the period from August 1, 1953, to about February 1, 1954, the Company and the Union continued in effect a certain union-security provision of a previously concluded collective-bargaining agreement making payment of assessments by the Union, in addition to initiation fees and dues, a condition of employment, and requiring as a condition of employment of certain employees membership in the Union prior to the thirtieth day following the beginning of their employment or re-employment in a job within the bargaining unit and prior to the thirtieth day following the effective date of the contract; that on about December 1, 1953, the Union canceled the membership of Charles E. Pense in the Union purportedly for being more than 3 months delinquent in payment of union dues and refused from January 14, 1954, to reinstate him to membership although the Union had, from September 1, 1953, to about January 1, 1954, failed to cancel the membership of other employees of the Company who were more than 3 months delinquent in dues and during the period from about December 1, 1953, to about February 1, 1954, reinstated to membership other employees of the Company who were delinquent in dues payments for more than 3 months; that this disparity of treatment between

Pense and other employees was due to the fact that Pense had assisted other employees of the Company to prepare, in accordance with the provision of the contract then in effect between the Union and the Company, revocations of previously given authorizations to deduct union dues, initiation fees, and assessments from their pay; that on about December 7, 1953, the Union requested and demanded that the Company discharge Pense allegedly for having forfeited his membership for delinquency in payment of dues; that the Company on about January 15, 1954, acceded to the Union's request and discharged Pense and thereafter, on the Union's request and demand, refused to reinstate Pense for the sole reason that the Union had requested and required his discharge.

The answer of the Union, dated June 1, 1954, in substance admitted the alleged union-security provisions in the contract, admitted that it had requested the discharge of Pense in accordance with the terms thereof, but denied that it had persisted in a demand that the Company decline to reinstate and re-employ Pense for any reason and in general denied the alleged unfair labor practices. The answer of the Company, dated July 9, 1954, admitted that, at the Union's request, it had on January 15, 1954, discharged Pense upon the Union's representation that Pense had declined and failed to pay dues required under the terms of the aforesaid union security clause of the contract, and that it had since that date refused to reinstate Pense for

the same reason. The Company's answer denied the commission of any unfair labor practices.

Pursuant to notice, a hearing was held at Los Angeles, California, on July 12 and 13, 1954, before me as the duly designated Trial Examiner. The General Counsel and the Company were represented by counsel, and the Union was represented by its Grand Lodge Representative. All participated in the hearing and were afforded full opportunity to examine and cross-examine witnesses and to introduce evidence bearing upon the issues. At the opening of the hearing the Company made a motion to substitute the name of General Dynamics Corporation for that of Consolidated Vultee in the pleadings and the motion was granted. At the close of the hearing the Union made a motion to dismiss the complaint as to it. Ruling was reserved and is now denied for the reasons stated herein. Time was granted within which to file briefs. Briefs were received from the General Counsel and the Union and have been considered.

From my observation of the witnesses and upon the entire record in the case, I make the following:

Findings of Fact

I. The business of the Company

Consolidated Vultee Aircraft Corporation for a number of years up to April 30, 1954, was primarily engaged in the manufacture, development, design and sale of military and commercial aircraft, missiles, aircraft parts and accessories. The general of-

fices of Consolidated Vultee Aircraft Corporation were located at San Diego, California, with manufacturing divisions located in that city, in Pomona, California, Fort Worth, and Daingerfield, Texas.

Effective as of the close of business on April 30, 1954, Consolidated Vultee Aircraft Corporation, a Delaware corporation, merged with and into General Dynamics Corporation, a Delaware corporation, the surviving corporation being known by the latter name. This merger was effected in accordance with the statutes of the State of Delaware and resulted in the transfer of all Consolidated Vultee Aircraft Corporation rights, privileges, business, property, assets, etc., to, and the assumption of all Consolidated Vultee Aircraft Corporation obligations and liabilities by, General Dynamics Corporation. Following the aforesaid merger, the activities and business of Consolidated Vultee Aircraft Corporation were, by resolution of the Board of Directors, designated as "Convair, a Division of General Dynamics Corporation," hereinafter called Convair, or the Company. The activities and business of Convair continued uninterrupted after the merger in the same way as before. The general offices of Convair continued to be located at San Diego, California, and so far as the subject matter of this action is concerned the various operating divisions of Convair continue in all respects the same.

Convair's Pomona division, between January 1, 1954, and June 30, 1954, purchased raw materials and supplies valued in excess of $5,000,000. More than 75 per cent of such raw materials and supplies

were purchased from suppliers located outside the State of California and were shipped by said suppliers to Convair at Pomona, California. During the same period of time sales of said Pomona division exceeded the value of $18,000,000. Approximately 99 per cent of such sales were made to the United States Government and ultimately were shipped outside the State of California. The Company concedes and I find that it is engaged in commerce within the meaning of the Act.

II. The labor organization involved

The Union is a labor organization admitting to membership employees of the Company and representing such employees in collective bargaining with the Company.

III. The unfair labor practices

A. The union-security clause.

In the collective-bargaining contract between the Union and the Company in effect at all times during the period covered by the complaint was Article XIV, which, in part, reads as follows:

Union Security

Section 1. Any employee within the bargaining unit who, on the effective date of this agreement, is a member of the Union in good standing, and each employee within the bargaining unit who thereafter becomes a member of the Union shall pay while on the Company's active payroll and a member of the Union, initiation fees, monthly dues and general assessments levied by the International Association

of Machinists, Guided Missile Lodge No. 1254, in accordance with the constitution and by-laws of the Union as a condition of employment while in the bargaining unit, provided that in no event shall the initiation fee, monthly dues or general assessment exceed the amount specified in the constitution and by-laws; and each employee who, after the effective date of this agreement, is separated from the bargaining unit and who at such time is subject to the provisions of this section shall, upon rehire within the bargaining unit, again pay regular dues to the Union commencing with the date of rehire; provided, further, that any employee may withdraw from membership in the Union by notifying the Union and the Company by registered mail, postmarked between August 1 to August 15 of the then currently effective yearly period.

Section 2. No employee, as a condition of employment while in the bargaining unit, shall be required to pay while on the Company's active payroll any Union membership dues, fees or general assessments covering any period during which the employee was not in the bargaining unit or was not on the Company's active payroll.

Section 3. Any employee subject to the provisions of Section 1 above, who is thereafter separated from the bargaining unit, shall upon his reemployment in a job within the bargaining unit again pay membership dues to the Union in accordance with Section 1 above, unless such employee has withdrawn from membership with the Union in accordance with this Article.

It is contended by the General Counsel that the foregoing union-security provision is illegal and void because (1) it includes the requirement of payment of general assessments in addition to initiation fees and dues as a condition of employment, (2) it requires membership in the Union as a condition of employment of certain employees prior to the thirtieth day following the day of employment or re-employment and prior to the thirtieth day following the effective date of the contract.

With respect to the first contention, it was stipulated that the Union had never requested the Company to deduct any amount from the pay of any employee covering a general assessment and that the Union had never requested the Company to enforce by discharge or otherwise the provisions of Section XIV so far as they refer to the payment of general assessments. The determination of the legality of a contract does not, of course, depend upon whether or not anything illegal has been done in performance of it. A provision of an agreement which requires in the future the relinquishment of a right guaranteed in Section 7 of the Act may be just as illegal as one which requires a present relinquishment. But to say that the language is illegal, and hence, void, is not necessarily equivalent to saying that the use of the language was the commission of an unfair labor practice. Section 8 (a) (3) requires a discrimination as an element of the unfair labor practice and not the bare potentiality of one. The mere existence of a setting in which a discrimination could occur upon the occurrence of

another event—the levying of an assessment—does not, itself, constitute discrimination. Section 8 (b) (2), on the other hand, does not require that there be an actual discrimination as proof of the unfair labor practice there covered. It is sufficient that there be an attempt to cause discrimination. But does the mere inclusion of the word "assessments" in the union-security clause constitute an attempt to cause such discrimination? The verb "attempt" is defined, in Webster's dictionary: "To make trial or experiment of; try; endeavor to do * * *." The use of the word "assessments" in the contract prepares the foundation for the attempt, but the act constituting the endeavor is lacking. In those cases where the Board has found unfair labor practices by the employer and union in the very execution of an unauthorized union-security agreement, it may be noted that the interference, restraint, and coercion and likewise the discrimination occurs the moment the contract is executed, because the contract applies to certain employees, if not all, requiring that they immediately (or within less than the statutory grace period required to be given) do something that Section 7 of the Act guarantees they shall be free to refrain from doing. [2] It may be argued that, in those cases where employees, under a union shop clause, are given a grace period which is shorter

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[2] E.g., New York State Employers Association, Inc., 93 NLRB 127 and cases there cited; Heating, Piping and Air Conditioning Contractors, etc., 102 NLRB 1646.

than the one required by the Act, the contract has future rather than immediate application, but its execution is, nevertheless, held to be a violation of Section 8 (a) (1) and (3) and of 8 (b) (1) (A) and (2) of the Act; so the mere fact that the requirement for payment of assessment in the instant contract is future rather than present should not distinguish the case. It is not the futurity of application of the agreement alone which distinguishes the present case. Rather it is the fact that employment cannot be affected, and employees will not be required to do that which they have a right to refrain from doing, unless a certain condition occurs which is not certain to occur. Lapse of time alone is certain to occur; the levying of an assessment is not. The complaint alleges that the use and continuation of the word "assessments" in the union security clause constituted a violation not only of Section 8 (a) (3) and 8 (b) (2) but also of Sections 8 (a) (1) and 8 (b) (1) (A) of the Act by the Company and the Union, respectively. Without the levying of an assessment, what coercion is there? The language alone exerts no compulsion on employees as does a contract requirement of membership within 30 days as a condition of employment. Until the levying of an assessment no employee is compelled to do anything which, under Section 7 of the Act, he has a right to refrain from doing. But wholly aside from the conditional aspects of the assessment, the provision for payment of assessments may be found to be no unfair labor practice.

Employees here are not required to join the Union with payment of assessments held over their heads as a condition of employment. The main purpose of the union-security clause here is maintenance of membership, where initial membership is voluntary, rather than closed or union shop, where it is not. It has been decided that no unfair labor practice occurs when an employee, who is already a union member at the time he is hired, is required, without grace period, to remain a member for the life of a maintenance-of-membership contract. [3] Obviously an employee may, by his voluntary act, relinquish his right to refrain from engaging in the activities enumerated in Section 7 of the Act. Thus, as an employee is not compelled to join the Union here, he may, by his voluntary act of joining, waive the protection he otherwise might have had.

I am not aware of any unfair labor practice case precisely like the one at hand, and I am not convinced that such cases as deal with the kind of unauthorized language involved here are controlling. The General Counsel cites several representation cases in his brief which hold that the requirement of payment of union assessments as a condition of employment goes beyond the scope of union-security clauses permitted by Section 8 (a) (3) of the Act and renders the contract illegal. Because of such illegality, the Board will not permit the con-

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[3] Wagner Iron Works, 94 NLRB 446.

tract to be a bar to an election. [4] The Act does not specifically authorize the requirement of payment of assessments as a condition of employment. In this sense it is illegal. But the use of the language alone is not a crime, a tort, nor, in my opinion, an unfair labor practice. I find, therefore, on the facts of this case, that no unfair labor practice was committed by the Company or the Union by virtue of the inclusion of assessments in addition to dues and initiation fees in the language of the contract. By the agreement of February 1, 1954, the requirement of payment of assessments was removed; so, except to the extent that the problem arises in connection with the discharge of Pense, the matter is relatively unimportant.

With respect to the second contention—that the union-security clause is illegal and void because it requires as a condition of employment, in respect to certain employees of the Company, membership in the Union prior to the thirtieth day following the beginning of their employment or re-employment and prior to the thirtieth day following the effective date of the contract—it will be noted that the union security here provided for is maintenance of membership rather than a union shop. By this agreement no one is obliged to join the Union who has not already done so, or does not, during the

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[4] International Harvester Co., 95 NLRB 730; Continental Can Co., Inc., 98 NLRB 1252; National Malleable and Steel Castings, 99 NLRB 737; John Deere Planter Works of Deere and Co., 107 NLRB No. 306.

term of the agreement, do so voluntarily. Ever since the Krause Milling Case, [5] it has been settled law that, as to existing union members, it is not necessary to provide, in the union-security clause, a 30-day escape period after the effective date of the contract. Since the 30-day requirement of the Act applies only to new employees, then, it becomes a question as to whether, in this case, new employees have been afforded this protection. As this is a maintenance of membership rather than union shop provision, employees never before employed would, of course, be subject to the union security clause only if they voluntarily joined the Union; so they are not required to join as a condition of employment. [6] The only serious question involved in this second contention, therefore, concerns the requirement of Article XIV of the contract that an employee who, being a member of the Union on leaving the bargaining unit, shall, upon re-employment in it later, pay dues thereafter during the term of the contract unless he has withdrawn from the Union in the one way, and at the one time, specified in the article—that is, by notifying the Union and the Company thereof by registered mail, post-

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[5] Charles A. Krause Milling Co., 97 NLRB 536.

[6] Article XIV does not specifically refer to employees who, at the time they are hired, are already members of the same parent organization. But if they are required to transfer their membership to the Union and thereafter maintain it for the life of the contract, the agreement would not be illegal as to them. Wagner Iron Works, 94 NLRB 446.

marked between August 1 and 15 of the then currently effective yearly period. It is possible that the parties were contemplating only the case of employees who are transferred from the Pomona division to another division where they transfer their membership to a different lodge of the same parent organization and who are still members of the same parent organization at the time they are retransferred to the unit covered by the contract. The language of the agreement, however, is broad enough to cover a number of other situations. For example, an employee might resign from employment at some time other than between August 1 and 15 and might at that time notify the Union of his intent to withdraw from membership in the Union or, having resigned from employment, he might thereafter permit his membership to be automatically extinguished by failure to pay dues for 3 consecutive months in accordance with the Union's by-laws. Being no longer an employee, he is not covered by the contract and may withdraw his membership other than by the way provided by the contract. Even if an employee who is transferred by the Company from the unit here involved to another division retains his membership in the Union's parent organization at the time of transfer, he might thereafter resign from employment and terminate his membership, or, continuing in employment in another division of the Company withdraw from the Union while so employed. There is no evidence that a maintenance of membership agreement between the Company and a local of the

Union's parent organization applied to each division to which an employee might be transferred. But even if there were, the employee might withdraw from the union having such agreement, in accordance with the terms of the latter agreement. These terms, so far as it appears, would not necessarily be the same terms as those stated in the agreement here involved. And certainly there would be no reason to notify the Union after the employee had transferred his membership to another local. Hence, the employee might have withdrawn properly from the Union's parent organization and local at the place where he was employed and, being thereafter a nonunion employee, be transferred back to the unit here involved where he would again be obliged, under the terms of the contract under consideration to join the union at once because he was a member when he left the unit and did not withdraw from the Union in accordance with the provisions of Article XIV of the contract under consideration. An employee who, after terminating his membership in one of several ways indicated above, and who is re-employed by the Company within the bargaining unit while the contract, or an automatic extension of it, is, in effect, in the same situation as any new employee who is not a member of the Union. If a new employee is required to become a member of the Union, he must, under the Act, be given no less than 30 days from the date of his employment to join the Union. The same applies to transferees who are not union members. It may be argued that the requirement of Section 3 of

Article XIV of the contract is not one for union membership. The language is, "* * * shall again pay membership dues to the Union in accordance with Section 1 above * * *." Membership dues are normally payable only by members. Section 1 of Article XIV of the contract requires dues payment to be made only by members. I construe the contract therefore, as meaning that employees who were members of the Union when they left the unit must again become members of the Union upon re-employment in the unit, without exception and without the statutory 30-day grace period, as a condition of employment. This provision does not conform to the requirements of Section 8 (a) (3) of the Act. There is evidence that employees were in fact transferred and that transferees made application to join the Union. It does not appear whether all the applications were for transfer alone or for new membership. In the latter case, so long as this clause existed in the contract, it cannot be determined that they joined the Union voluntarily. The tendency of the language is to compel membership. But even if the intent is merely to compel payment of union dues without requiring membership of such employees, the provision would still violate the Act, for it would coerce employees into doing that which under Section 7 of the Act they would have a right to refrain from doing. Hence, I find that by maintaining this provision in the agreement for the period of time covered by the complaint, [7] the

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[7] The same provision appears in the 1954 agreement.

Company has discriminated in regard to hire and tenure of employment of employees in violation of Section 8 (a) (3) of the Act, and the Union, by causing such discrimination, violated Section 8 (b) (2) of the Act. By the same conduct, the Company violated Section 8 (a) (1) of the Act and the Union violated Section 8 (b) (1) (A) of the Act.

B. The discrimination against Pense.

Charles Pense had been employed by the Company in San Diego, California, on March 9, 1951. He was transferred to the Pomona division on January 19, 1953, where he continued to be employed until the date of his discharge as hereinafter related. He was a member of the Union from about October 1, 1952, until the time he was automatically dropped from membership for nonpayment of dues in December 1953. Before he was transferred from San Diego, he had been a shop committeeman for the Union for a few months, and shortly after his transfer to Pomona he became a shop committeeman there until some time after August 1, 1953, when he ceased paying his union dues.

Section 4 of Article XIV of the contract provides that an employee may have his initiation fee, dues, and general assessments deducted from his pay if he desires by executing an authorization therefor. Following Section 7 of said Article is given the language of the authorization, which in its terms states the several ways in which the authorization may be canceled, one being by "written notice to

the Company, copy to the Union, * * * by registered mail dated by U. S. Post Office cancellation between August 1 * * * [and] August 15 of the then currently effective yearly period." It will be noticed that this period is the same as that for withdrawing from the Union.

On August 1, 1953, Pense borrowed a typewriter in the plant and typed the following letter:

Consolidated Vultee Aircraft Corp.,
Guided Missile (Pomona) Division
Pomona, California
Gentlemen:

Please accept this as your authority to discontinue payroll deduction of union dues from my weekly pay check effective as of August 1, 1953.

This is in accord with article 14 section "C" of our current working agreement [8] and a copy of this notice is being forwarded to union headquarters, Pomona, California.

He mailed this to the Company and sent a copy to the Union, both by registered mail.

While Pense was typing his letter, several employees looked over his shoulder, read what he was typing, and asked questions about it. Some asked to borrow a copy of it so that they might write simi-

[8] There is no section "C" of Article XIV of the contract, as such. The reference is to the paragraph of the authorization form quoted in that article which lists three ways in which the authorization may be canceled. The third, in paragraph "C", is by the kind of notice given by Pense.

lar letters. Those who could use the typewriter typed their own letters. A few who were unable to type asked Pense to do it for them, and he did.

As there was, at this time, another union seeking to establish itself in the plant, as quite a number of members canceled their dues deduction authorizations or memberships, and as some of the employees who had copied Pense's letter apparently believed they were withdrawing from the Union instead of just canceling their dues deduction authorization, the Union was displeased with Pense's action, and members in his department undertook to choose a new shop committeeman to replace Pense. Having heard rumors of Pense's action, Union President Hobb reported the matter to Angelo Ursino, Grand Lodge Representative and business agent of the Union, for investigation.

Section 14 of Article E of the constitution of the Union's parent organization provides that delinquency for 3 months in the payment of dues or assessments results automatically to cancel membership. Section 15 thereof provides in part:

Any person whose membership has been cancelled may be reinstated to membership, but the application for reinstatement must be made to the L. L. [local lodge] under whose jurisdiction the applicant is working, and the regular reinstatement fee of such L. L. must be paid.

Pense's dues fell in arrears for more than 3 months on December 1, 1953. Under date of December 7, 1953, the Union wrote a letter to the Com-

pany notifying it that Pense and another employee, by name of D. M. Ainsworth, "have not complied with said contract, as a Condition of Employment," and the "Union will await your compliance to the above subject set forth." The letter referred to, under the address, stated its subject to be "Union member in violation of Article XIV Section I, as a condition of employment." Presumably the foregoing letter was deemed not specific enough, for on December 17, 1953, the Union again wrote to the Company, this time as follows:

The International Association of Machinists Guided Missile Lodge #1254 is hereby notifying Consolidated Vultee Aircraft Corp., Pomona Division, co-signers of the present contract between the Union and the company, that former Union Members, D. M. Ainsworth, Department 25, Clock Number 10341 and C. E. Pense, Department 27, Clock Number 70053, are not in compliance with Article XIV of our Agreement in that they have been dropped from membership of our Association because of non-payment of dues in accordance with the Constitution and By-Laws of our Union.

We therefore, request the company to immediately terminate the above employees in accordance with the terms of our Agreement.

On January 7, 1954, Pense, still employed, went to David Provan, his successor as shop committeeman, and asked how much it would take to straighten up his dues. Provan figured that Pense owed $17.50 for 5 months' dues, including Janu-

ary's. Pense gave Provan a check for the amount, but Provan said he was not sure that he could accept it. Provan asked how Pense came to get into this difficulty. Pense replied that he did not have the money. Provan expressed disbelief. The latter then telephoned John King, the Union's financial secretary, informed him that he had a check from Pense for dues and asked if he could accept it. King told Provan to return the check because Pense had already been dropped from membership and would have to apply for reinstatement. Later on the same day, Pense went to King at the Union's office, told him of his financial difficulties, procured an application for membership, filled it out by hand, and gave it to King. To the application form is attached a check-off authorization with a perforation between to facilitate separation. Pense tore off the check-off authorization before handing the application to King with a tender of his check for $17.50. King took the application but refused to take the check.

Believing that the Union might react unfavorably to an application without a check-off authorization and believing also that he should offer an explanation of his previous revocation of his dues-deduction authorization, Pense, on January 11, 1954, wrote a letter to Ursino, the Union's business representative, explaining his financial difficulties and the incident of employees' copying the revocation of his authorization for dues deduction and requesting Ursino's help. Te enclosed a new, typed application, this time with the dues deduction

authorization filled out,[9] and requested that Ursino submit it to the members of the Union. This letter was delivered in due course of mail to the office of the Union for Ursino. The evidence is in dispute as to whether or not Ursino saw this letter before Pense's application was acted upon. Ursino testified that he did not receive the letter until after the membership meeting on January 14 when applications were passed on. He likewise testified that no application was enclosed with the letter. He testified that he did not mention receipt of Pense's letter until a few days after receiving it, when he commented to King that the letter which King had handed him the previous Thursday night, January 14, was a letter from Pense, that "There's quite a story involved in it * * * There isn't a thing I can do about it." But he did not, according to his testimony, give King the letter or application. However, the application which went before the membership on January 14 was the typed application which Pense testified he enclosed with his letter and not the one filled in by hand in King's presence. Contrary to Ursino's testimony, I find that the application was enclosed with Pense's letter and that in some manner it came into the possession of King before the January 14 meeting.

Applications for membership customarily go through the hands of a screening committee, which

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[9] According to Pense's testimony, which I credit on this, he dated the new application with the same date as his handwritten one, January 7.

make recommendations thereon. However, the applications of Ainsworth and Pense, then in possession of Financial Secretary King, were brought up at a meeting of the Union's executive board held an hour before the membership meeting on the evening of January 14. Before the executive board meeting, Ursino had arranged with John Hobb, president of the Union, for Ainsworth to appear in person before that board to plead his cause for readmission to the Union. After hearing Ainsworth, the committee voted to recommend his application. Hobb then asked the committee what action they wished to take on Pense, commenting on his conduct at the time of typing his letter revoking his dues deduction authorization. The committee voted to reject Pense's application. King attached their recommendations to the applications and took them, with a number of new applications, to the membership meeting. No member of the screening committee was present at the executive board meeting. No testimony was given to show whether or not the screening committee saw the applications before the membership meeting, but on the back of Pense's application appears the signature of the chairman of that committee, with the date January 14, 1954, under a recommendation that Pense's application be rejected. At the membership meeting that night, King read the applications and recommendations of the executive board to the members. Apparently no comment was made about any action of the screening committee. Business Representative Ursino, at his request, was given time to speak on be-

half of Ainsworth. A vote was then taken and carried to accept all applications except that of Pense. This was treated as a rejection of Pense's application.

On January 15, 1954, the Union wrote a letter to the Company, relating the action taken at the meeting the night before, canceling its request for discharge of Ainsworth, and repeating the request in its December 17 letter for the discharge of Pense. Although this letter stated that Pense's application for reinstatement was rejected, it did not state that Pense had tendered the requisite dues and initiation fee and that the Union had refused to accept them. The Company complied with the Union's request, discharging Pense on the same day, relying solely on the representations and request of the Union hereinabove described. Thereafter Pense unsuccessfully prosecuted a grievance[10] and on February 1, 1954, filed the charges initiating these proceedings.

C. Concluding findings on Pense's discharge

In contending that the Company violated Section 8 (a) (3) of the Act, the General Counsel reasons that the invalid provisions of the union-security article of the contract invalidated the entire article

[10] Ursino admitted that when Pense's grievance came to his attention he might have commented, "This is a good one. Here is a son of a bitch we get fired and now he wants us to represent him," although he did not think he used the words "son of a bitch." He confessed, however, to using the expression quite a bit.

so that the Company's discharge of Pense for non-membership in the Union at the latter's request would be without any contractual justification. With respect to the Union, the General Counsel makes not only this argument in support of his contention that the Union violated Section 8 (b) (2) (which would be a violation of the first alternative of that subsection) but he also contends that the Union violated Section 8 (b) (2) with respect to the second alternative stated in said subsection by terminating Pense's membership, or at least denying him reinstatement, because of his act of assisting other employees to cancel their dues deduction authorizations rather than his mere failure to pay dues. The latter contention, which will be first considered, is supported by the following facts:

Despite the provision of the constitution, previously quoted, that delinquency in dues for 3 months automatically terminated membership and that thereafter an application for reinstatement had to be made the Union, in at least three instances the Union accepted payment of back dues after 3 months' delinquency without first requiring the delinquent member formally to make application for reinstatement or to be voted on at a membership meeting. The three were not dropped from the rolls when, according to the constitution, they should have been. Clayton Wilson, one of the three, despite due notice of delinquency, owed October, November, and December, 1953, dues and was 3 months' delinquent on January 1, 1954. But on January 20, 1954, Wilson's tender of his October and Novem-

ber dues was accepted with no requirement that he make application for readmission. He left the unit on January 24, but in about May, 1954, he tendered his December and January dues to pay to the time he left the unit. The Union rejected them at this time on the ground that he had been dropped for nonpayment of December, January and February dues.[11]

Nunzio Bitetti[12] was delinquent in his dues for September, October, and November, 1953, the same as Pense. On November 10, 1953, King, the financial secretary, sent him a notice that he would be 3 months delinquent at the end of that month, but Bitetti did not pay his dues before December 1 or even before January. On January 7, 1954, the same date that Pense tendered his delinquent dues, Bitetti paid 2 months' dues.[13] The Union had among its records an application for reinstatement endorsed as approved by the screening committee. The purported date of this approval was December 24, 1953. But I find on the basis of the testimony of Financial Secretary King, that on January 11, 1954, he back-dated the endorsement, intending to insert the date of the last previous membership meeting, which would have been held on December

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[11] The change in attitude might be accounted for by the fact that the charge against the Union had been filed in the interim.

[12] Bitetti's name is incorrectly spelled in the record as Bittetti.

[13] The finding as to the date is based on a stipulation between the Union and the General Counsel.

24 if it had in fact been held on the fourth Thursday of the month as usual. However, the last previous meeting before January 11 was actually held on December 21. The minutes for that meeting do not show any action taken on any application for reinstatement by Bitetti. Bitetti's name was never removed from the roll of members as was Pense's. Union President Hobb testified that the Union had never had an application for reinstatement from anyone dropped by the Union before those of Pense and Ainsworth. The sum of the evidence leads me to the conclusion and I find that on January 11, 1954, after Bitetti had been allowed to pay his back dues, the Union, without vote of the membership, caused a membership application card to be made out and endorsed approved by the screening committee chairman in order to give a formally correct appearance to Bitetti's case and that Bitetti was not actually put through the same application procedure that Pense was.

A third man, William Goetz, failed to pay his dues after May 1953. He received delinquency notices on August 11, September 8, and September 28, 1953. On September 1, 1953, he was more than 3 months in arrears, but he was not dropped from the rolls. On September 15, 1953, he tendered, and the Union accepted, payment of 2 months' dues.[14] King explained that Goetz' name was not removed

[14] King sometimes gave a notice of 2 months' delinquency. Presumably the notice of September 28 was of that character as Goetz would not have been again 3 months in arrears until November 1.

from the rolls through an oversight by the Grand Lodge (parent organization) to whom names of members and last payment of dues are reported. But whether or not the Grand Lodge overlooked Goetz' delinquency, it is the duty of the financial secretary to note the name of a delinquent member for dropping as soon as he becomes 3 months in arrears. King might be excused for an error in his report to the Grand Lodge; but when he sent Goetz his delinquency notice on September 8, he admittedly knew that Goetz was already more than 3 months in arrears and should have been dropped. Nevertheless, on September 15, knowing this, King accepted from Goetz 2 months dues without requiring Goetz to make application for readmission as he did with Pense.

Pense and Ainsworth were the first delinquent members to be put in the position of having to make application for reinstatement and having their applications passed on by the executive board and the membership. And Pense was the first to be discharged for loss of membership. The mere fact that the Union had failed to comply with the constitution before the cases of Pense and Ainsworth arose, does not mean that it could not thereafter commence to comply with the constitution as it should have. But the fact that it commenced with Pense, against whom there appeared to be some ill feeling for reasons other than his failure to pay dues, and the fact that the constitutional provision was not uniformly applied thereafter, are circumstances not to be overlooked in determining the

true reason for the Union's dropping of Pense from membership.[15] It is conceded that Pense's tender of $17.50 was not rejected because of its form or amount. It is reasonably inferrible, and I find that, if Pense had not aggrieved the Union other than by becoming delinquent in dues, he would not have been dropped from the rolls. He was, I find, actually deprived of membership because of the circumstances surrounding his cancelation of his dues-deduction authorization. The Act does not authorize the Union to cause a discharge for such reason, so I find that the Union, by depriving Pense of his membership for such reason and by thereafter causing his discharge, violated Section 8 (b) (1) (A) and (2) of the Act.

But even granting, for the sake of argument, that Pense was dropped from membership solely for nonpayment of dues, he was, nevertheless, thereafter denied membership, on application, for a reason other than his failure to tender the dues and initiation fee uniformly required as a condition of acquiring membership. His application for reinstatement was accompanied by an authorization to deduct from his wages not only his dues but his initiation fee. No contention was made that this was inadequate as a tender. Ainsworth made the same

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[15] See Intermediate Report and Recommended Order in Biscuit and Cracker Workers Local Union No. 405, AFL, Case No. 2-CB-999, where a Trial Examiner found that disparate treatment deprived the respondent union of any justification for causing employee's discharge for nonpayment of dues.

kind of tender and his tender was accepted. If Pense's application had been accepted, he would have been charged the equivalent of 2 months' dues as a reinstatement fee, as was Ainsworth, and that amount, $7.00, would have been paid under the check-off authorization tendered by Pense with his application, just as it was in the case of Ainsworth. No question is involved of the right of the Union to discipline its members, a right specifically protected by Section 8 (b) (1) (A) of the Act. If the Union felt that Pense's conduct in assisting union members to revoke their dues-deduction authorizations was inimical to its interests and deserving of penalty, it was free to inflict it. It was even free to withhold membership from Pense for such reason so long as it did not seek to cause his discharge by the Company for that reason. That it did in fact request his discharge for a reason other than his failure to pay his dues, or for a reason other than his failure to tender dues and initiation (or reinstatement) fee, is obvious from the fact that, but for the Union's displeasure caused by the conduct of Pense in aiding employees to revoke their dues deduction authorizations, his case was no different from that of Wilson, Goetz, and Bitetti, whose tender of dues more than 3 months' delinquent was not rejected, or from the case of Ainsworth, whose application for reinstatement, accompanied by a dues-deduction authorization was accepted. The Union sought to distinguish the difference in treatment between Ainsworth and Pense on the ground that Ainsworth appeared personally before the ex-

ecutive board and pleaded his case, while Pense did not. No Union rule, by-laws, or constitutional provision required appearance before the executive board in such case. In fact there was nothing in such rules providing for consideration of applications by the executive board at all, and there was no precedent for it. Pense coud not have been expected to know that his case would be passed on by the executive board, much less that he would be expected to appear before it. Had not the business agent taken Ainsworth under his wing and steered him to the executive board, Ainsworth would not have appeared there either. I am not persuaded that the disparate treatment afforded the two men resulted from such a tenuous and illogical distinction. Rather I find that the real reason for rejection of Pense's application (just the same as the rejection of his tender of dues) was the Union's displeasure with his conduct as explained above and was not, in any event, a failure to tender the requisite dues or initiation fee. Had Pense already been discharged at the time he made his application for reinstatement in the Union, the rejection thereof could not have affected his employment status. It does not appear why the Union, after demanding the immediate discharge of Ainsworth and Pense on December 17, 1953, stood silent for nearly 30 days before again insisting on giving the contract effect. No contention is made that the Company wilfully disregarded its agreement. I note the fact that it acted quite promptly on receipt of the Union's letter of January 15, 1954. I can only

infer that the delay was acquiesced in by the Union for some reason, perhaps to give Ainsworth and Pense an opportunity to make application for reinstatement and have it passed on. In any event, Pense had not yet lost his employment before either of the tenders made as hereinbefore related. Inasmuch as the Union, by its letter of January 15, 1954, cause the Company to discharge Pense and inasmuch as the reason of the Union for causing such discharge was not Pense's failure to tender the requisite dues and initiation fee, the Union caused the Company to discriminate against Pense in violation of Section 8 (b) (2) of the Act.

Because the Company had no reason to believe that Pense had been dropped from membership or denied reinstatement for any reason other than failure to pay dues, as the Union represented the case to be, the Union's true motive did not enter into the Company's action of discharging Pense. Therefore, although Pense was in fact discriminated against, the Act permits the Company to justify (or excuse) the discharge so as to relieve it of the consequences of the discrimination. This no doubt explains the omission, in the complaint, of an allegation that the Company violated Section 8 (a) (3) as a result of the Union's improper motive.

On the other hand, the complaint alleges that both the Company and the Union committed unfair labor practices as a result of their conduct with respect to Pense because of the illegality of the union-security

provision. In making this contention, the General Counsel adopts the premise that any illegality in terms of a union-security clause renders the entire provision void. If this premise is correct, not only the Union but the Company likewise is guilty of an unfair labor practice in the discrimination against Pense, for the justification by the Company for Pense's discharge depends on the existence of a union-security agreement which requires the payment of dues and initiation fees as a condition of employment. If the entire union-security section of the contract is void for illegality, the Company's justification is gone, even if it did not discharge Pense pursuant to the illegal language—that is, did not discharge him for failing to pay dues after having left the unit while a union member and later being re-employed in the unit at a time when he was not a member. When the Act uses the word "agreement" in the proviso, "That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization * * * to require membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later * * *" it does not furnish any definition for the word. It could mean one entire writing, called an agreement, whether or not each item therein is violative of the purpose of the Act; or it could mean just the individual item of agreement among many dealing with union security; or it could mean all items of that portion of an entire contract which deals with the

subject of union security even though less than all are contrary to the purpose of the Act. It has been decided that it does not have the first meaning. An entire contract is not a nullity because of an illegal union security provision.[16] So far as I am aware, it has not yet been decided that illegality in one aspect of a union security contract does not void the entire union security section. The Act does not specifically require the nullification of the whole union-security agreement because one portion of it may be unauthorized. The proviso quoted above is negative—that nothing shall preclude the making of a union-security agreement—rather than that all parts of an agreement attempting to establish union security are void. The license for finding such agreement void derives from the principle that a purpose to circumscribe the rights and protection intended to be provided for employees by the Act is contrary to the policy of the law. But calling one portion of a contract illegal is not tantamount to saying that the whole is void. As used in connection with contracts, the word "illegal" may have different meanings, depending on how far it may be necessary to go to effect the policy of the law. Severability in terms of a contract may contribute to a determination of the extent to which a contract will be outlawed. Severability is generally found to exist if the illegality is in a promise or condition which does not constitute

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[16] N. L. R. B. v. Rockaway News Supply Company, Inc., 345 U. S. 71; Golden Valley Electrical Association, Inc., 109 NLRB No. 62.

the main or essential feature or purpose of the agreement, where deletion of the unlawful part will not distort the meaning and intent of the parties as to the balance, and where the illegality is not so interwoven with the remaining portion as to taint it with illegality, too.[17] It may be that, to the extent that an employee who was a member of the Union on leaving the unit is still a member of the same parent organization on being re-employed in the unit, albeit through a different local, a requirement of membership or payment of dues on re-employment in the unit may be lawful without a grace period. But the agreement itself does not differentiate between such employees and others who are not members on re-employment. As to the latter, the language of the agreement is unlawful. No words can be deleted which will permit application so far as legal. Therefore, the whole phrase is void. But this does not necessarily mean that the entire maintenance of membership article must be found to be void. Again applying the test of severability, I note that the unlawful language is subsidiary to the main purpose of Article XIV, it is severable in its own terms, that is, it is possible to delete the offensive language without rendering the remainder of the maintenance-of-membership agreement unperformable, and it does not, in my opinion, taint the balance with its illegality so that the remaining maintenance-of-

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[17] See American Law Institute Restatement of Contracts, Vol. 2, § 603; annotations: 6 L.R.A. (N.S.) 547; 26 L.R.A. (N.S.) 106.

membership provisions must be nullified.[18] Accordingly, I find that, although the provision for mandatory payment of dues by employees when re-employed in the unit, if they had been members on leaving it, is illegal and void, it does not so pervade the balance of the maintenance-of-membership agreement as to taint it and render it a nullity. Because Pense was not discharged pursuant to the severable illegal provisions of the maintenance-of-membership agreement, the respondents are not deprived of any justification for their conduct in connection with his discharge that they otherwise would have. However, even under a valid union-security agreement, the Union's conduct here would not have been justified; so it is not relieved from the consequences of its unfair labor practice by the fact that the illegality is severable and did not contribute to the discrimination against Pense.

Although I have found that the inclusion of the

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[18] In this respect, I find the case here distinguishable from Pacific Intermountain Express Co., 107 NLRB No. 158; Local 803; International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America (AFL) et al., 107 NLRB No. 212; and Tacoma Harbor Lumber & Timber Company, 108 NLRB No. 127. In these cases, the illegality pervaded the entire union security plan. In the last cited case, for example, the agreement was for a modified union shop which did not give new employees the full 30 days in which to join the union. The principal purpose of a union shop cannot be achieved unless new employees join the union. The illegal portion of that contract, therefore, could not be considered subsidiary to the main purpose of the clause.

requirement of payment of general assessments in the contract was not by itself an unfair labor practice, there is no doubt that the language was unauthorized by the Act. In the representation cases previously cited, the Board held such language to be illegal. The question of severability was not raised. It may be argued that, in holding such contract no bar to an election, the Board, in effect, was holding that the entire contract was a nullity. But that is not necessarily true. The Board has recently held in an unfair labor practice case, that illegality of a contract in one respect does not warrant an order to cease and desist giving effect to the entire contract.[19] As previously stated, the extent to which illegality will be found to void a contract depends to some extent on how far it may be necessary to go to give effect to the policy of the law. The Board may, in its discretion, decide that, in representation cases, the policy of the law can best be effectuated by holding that a contract in which a union attempts to gain any unauthorized advantage will constitute no bar to an election. In an unfair labor practice case, it may be necessary to do no more than to require that the unauthorized language be deleted. This would be true if the illegal language were severable. Where no moral turpitude is involved and where the statute does not expressly state that the use of unauthorized language will nullify the contract, the policy of the law may be effectuated adequately by requiring the parties to eliminate the offending lan-

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[19] Golden Valley Electric Association, Inc., 109 NLRB No. 62.

guage so as to guard against even the possibility of a future unfair labor practice. The Union explains that the unwarranted word "assessments" got into the agreement because it was in a check-off provision in former contracts which did not contain any union-security provision, and, when the maintenance-of-membership contract was made, it was incorporated therein without noticing the need for a change. If this be true, it was a matter of inadvertence rather than design to violate the policies of the Act, no one actually suffered as a consequence of the inadvertence, and the Union gained no preferred position as a result thereof. Whatever remedy might be deemed essential to cope with intended illegality, voiding the entire union security provision seems unnecessary here where apparently it was not inserted by design and where no performance had taken place under it. Under the Union's constitution, assessments are not treated as dues, being separately payable. Under the contract there is no confusion between dues and assessments, both apparently being payable independently. So the unauthorized word or words may be stricken without affecting performance of the remaining provisions; and the requirement of payment of general assessments is subsidiary to the main purpose of the Union's security clause, so it does not taint the remaining legal language. Consequently, I find the provision for payment of general assessments in the contract is severable, and that, although it is void it does not affect the remaining parts of the agreement found not to be illegal.

IV. The effect of the unfair labor practices upon commerce

The activities of the respondents set forth in Section III, above, occurring in connection with the operations of the Company described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Having found that the respondents have engaged in certain unfair labor practices, I shall recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. As stated above, in a new collective bargaining contract between the Union and the Company effective February 1, 1954, the requirement of payment of general assessments as a condition of employment was omitted from the union security section, which otherwise remained the same. I see no reason to anticipate any danger that the omitted words will hereafter be reinserted in the same or a similar agreement. Therefore, no cease and desist order seems to be required as to such language.

No question has been raised concerning the propriety of recommending that the remedy extend to General Dynamics Corporation, successor of the original respondent, but in view of the Board's decision in Symns Grocery Co., 109 NLRB No. 58, it will be well to differentiate this case. It is unneces-

sary to decide whether a distinction should be drawn between an assignee, as in that case, where there was a severance of the business sold from that retained by the respondent, and a successor, as in this, where the respondent merges in a new corporation and continues as a division of the successor corporation, because here the successor, General Dynamics Corporation expressly assumed all of the obligations of Consolidated Vultee Aircraft Corporation. This would include the collective bargaining agreement made on February 1, 1954. The new agreement continued in effect a portion of the illegal language of the prior agreement as heretofore found. Hence, to that extent, the successor, General Dynamics Corporation, will merely be remedying its own unfair labor practice. Furthermore, General Dynamics Corporation, by its own motion to be substituted as respondent in place of Consolidated Vultee Aircraft Corporation, acquiesced in the issuance of any remedial order against itself.

Since it has been found that the Union caused the Company discriminatorily to discharge Pense for reasons other than his failure to tender the requisite dues and initiation fees in violation of the Act, I shall recommend that the Union notify the Company and Pense that it withdraws any and all objections it may have to the reinstatement of Pense with his previous seniority and other rights and privileges, and that it will not again request his discharge for a reason other than his failure to tender the requisite dues and initiation fees (including reinstatement fees). I will further recommend that the Union

make Pense whole for any loss he may have suffered as a result of the discrimination caused by the Union by paying to him a sum of money equal to that which he would have earned in his employ with the Company but for the discrimination against him, from January 15, 1954, to 5 days after the receipt of notification by the Company and Pense that it has withdrawn its objection to his reinstatement as aforesaid, less his net earnings elsewhere, if any, during that period.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, I make the following:

Conclusions of Law

1. The Union is a labor organization within the meaning of Section 2 (5) of the Act.

2. By maintaining in effect, a union-security provision in a contract requiring that employees who, on leaving the bargaining unit were members of the Union, should, on re-employment in the unit, again pay dues, whether or not they are then members of the Union, and without providing the statutory period of 30 days in which to become members as a condition of employment,

(a) the Company has engaged in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act;

(b) the Union has engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) and (2) of the Act.

3. By causing the Company to discharge Pense

discriminatorily within the meaning of Section 8 (a) (3) of the Act, the Union has engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) and (2) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

Recommendations

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that:

I. The respondent, General Dynamics Corporation, Convair Division (Pomona), its officers, agents, and successors, shall:

A. Cease and desist from:

(1) Entering into, continuing in force, or giving effect to, any union-security provision of a collective bargaining agreement with the Union or with any other labor organization of its employees which requires membership in the Union or in any other labor organization or payment of union dues by nonmembers as a condition of employment within 30 days of their employment in the bargaining unit.

(2) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

B. Take the following affirmative action which I find will effectuate the policies of the Act:

(1) Post in conspicuous places at its place of business in Pomona, California, in all locations where notices to employees are customarily posted, copies of the notice attached hereto and marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region (Los Angeles, California) after being duly signed by the Respondent Company's duly authorized representative, shall be posted immediately upon receipt thereof and shall be maintained by it for a period of 60 consecutive days. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(2) Notify the said Regional Director in writing within 20 days from the date of service of this Intermediate Report and Recommended Order of what steps the Company has taken to comply herewith.

II. The respondent, International Association of Machinists, Guided Missile Lodge 1254, shall:

A. Cease and desist from:

(1) Entering into, continuing in force, or giving effect to, any union-security provision of a collective bargaining agreement with the Company or its successors or assigns which requires membership in the Union or payment of union dues by nonmembers as a condition of employment within 30 days of employment in the collective bargaining unit.

(2) Causing or attempting to cause the Company, its officers, agents, successors, or assigns, contrary to the provisions of Section 8 (a) (3) of the Act, to discriminate in regard to hire or tenure of employ-

ment or any term or condition of employment of Charles E. Pense or of any other employee, except to the extent that membership in a labor organization may be required as a condition of employment as authorized in Section 8 (a) (3) of the Act.

(3) In any other manner restraining or coercing employees in the exercise of their right to engage in, or to refrain from engaging in, concerted activities as guaranteed in Section 7 of the Act, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

B. Take the following affirmative action which I find will effectuate the policies of the Act:

(1) Notify the Company and Charles E. Pense that it withdraws any and all objections it may have to the reinstatement of Pense to his former or substantially equivalent position with his previous seniority and other rights and privileges and that it will not again request the discharge of said Pense or any other employee for a reason other than failure to tender the monthly dues or initiation fee (including reinstatement fee) uniformly required to acquire or maintain membership in the Union as a condition of employment under an agreement authorized by Section 8 (a) (3) of the Act.

(2) Make Charles E. Pense whole for any loss he may have suffered as a result of the discrimination caused by the Union by paying him a sum of money equal to that which he would have earned in his em-

ploy with the Company but for the discrimination against him between January 15, 1954 (the date of the discrimination) and a date 5 days after receipt by the Company or by Pense, whichever is later, of the notification required in the next preceding paragraph, less his net earnings[20] elsewhere during said period, such loss to be computed on a quarterly basis in accordance with the Board's established practice.[21]

(3) Post at its meeting place in Pomona, California, copies of the notice attached hereto and marked "Appendix B." Copies of such notice, to be furnished by the Regional Director for the Twenty-first Region (Los Angeles, California), after being duly signed by an authorized representative of the Union, shall be posted by it immediately upon receipt thereof and shall be maintained by it for a period of 60 consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondents to insure that such notices are not altered, defaced, or covered by any other material.

(4) Notify the said Regional Director in writing within 20 days from the date of service of this Intermediate Report and Recommended Order of what steps the Union has taken to comply herewith.

It is further recommended that, unless on or be-

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[20] Crossett Lumber Company, 8 NLRB 440; Minneapolis Star and Tribune Company, 109 NLRB No. 109.

[21] F. W. Woolworth Company, 90 NLRB 289.

fore 20 days from the date of service of this Intermediate Report and Recommended Order, the respective respondents shall notify said Regional Director in writing that they will comply with the foregoing respective recommendations, the National Labor Relations Board issue an order requiring the noncomplying respondent or respondents to take the action aforesaid.

Dated this 23rd day of August, 1954.

/s/ JAMES R. HEMINGWAY,
Trial Examiner

APPENDIX A

Notice To All Employees: Pursuant to the recommendations of a trial examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

We Will Not enter into, continue in force, or give effect to, any union-security provision of a collective bargaining agreement with International Association of Machinists, Guided Missile Lodge 1254, or with any other labor organization of our employees, which requires employees to become members of said Union or any other labor organization, or which requires nonmembers to pay dues, as a condition of employment within 30 days of their employment in the bargaining unit.

We Will Not in any like or related manner interfere with, restrain, or coerce employees in the exer-

cise of the right to self-organization, to form labor organizations, to join, or assist International Association of Machinists, Guided Missile Lodge 1254, or any other labor organization, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of said Act.

All our employees are free to become, remain, or refrain from becoming or remaining, members of the above-named Union or of any other labor organization except to the extent that membership in such union or labor organization may be required as a condition of employment by an agreement which is made in conformity with the provisions of Section 8 (a) (3) of the Act.

General Dynamics Corporation,
Convair Division (Pomona),
(Employer)

Dated.....

By .....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

APPENDIX B

Notice to All Members of International Association of Machinists, Guided Missile Lodge 1254: Pursuant to the recommendations of a trial examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

We Will Not enter into, continue in force, or give effect to, any union-security provision of a collective bargaining agreement with General Dynamics Corporation, Convair Division (Pomona), its successor or assigns, which requires membership in this Union, or payment of dues by nonmembers, as a condition of employment within 30 days from the date of employment in the collective bargaining unit.

We Will Not cause or attempt to cause the above-named corporation, its officers, agents, successors or assigns, contrary to the provisions of Section 8 (a) (3) of the Act, to discriminate in regard to hire or tenure of employment or any term or condition of employment of Charles E. Pense or of any other employee.

We Will Not in any other manner restrain or coerce employees in the exercise of their right to self-organization, to form labor organizations, to join or assist this Union or any other labor organization to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or

all such activities except to the extent that such right may be affected by an agreement requiring membership in this Union as a condition of employment as authorized in Section 8 (a) (3) of the Act.

We Will Notify the above-named corporation and Charles E. Pense that we withdraw all objections to his reinstatement to his former or substantially equivalent position with his previous seniority and other rights and privileges and that we will not again request the discharge of said Pense or any other employee for a reason other than failure to tender the dues and initiation fee (including reinstatement fee) uniformly required to acquire or maintain membership in this Union as a condition of employment under an agreement authorized by Section 8 (a) (3) of the Act.

We will make whole said Charles E. Pense for any loss suffered by him as a result of the discrimination caused against him.

International Association of Machinists,
Guided Missile Lodge 1254

Dated.....

By .....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Affidavit of Service by Mail and Postal Return Receipts Attached.

[Title of Board and Cause.]

RESPONDENT UNION'S EXCEPTIONS TO INTERMEDIATE REPORT

International Association of Machinists, Guided Missile Lodge 1254, the Respondent Union submits its exceptions to the findings of fact, conclusions, and reasons or basis therefor contained in the Intermediate Report and Recommended Order issued under date of August 23, 1954.

Exceptions

No. 1, Page 2, Lines 34-39: To the conclusion and inference that the Company refused to reinstate Pense because the Union persisted in its demand that the Company refuse to re-employ Pense.

No. 2, Page 6, Lines 43-47: To unwarranted, irrelevant, and immaterial speculation as to what the parties contemplated.

No. 3, Page 6, Lines 47-48: To the conclusion and finding that the language is broad enough to cover a number of other situations.

No. 4, Page 6, Line 48, to Page 7, Line 10: To the examples cited of situations inconsistent with the clear language of the Agreement between the parties.

No. 5, Page 6, Line 48, to Page 7, Line 10: To the conclusion and finding that a member under the circumstances cited could terminate his membership irregardless of the provisions in the Agreement and

to the inference that such termination would take precedence over his contractual obligations.

No. 6, Page 7, Lines 13-17: To the speculation, conjecture, and assumption of what might happen under another contract in effect elsewhere.

No. 7, Page 7, Lines 19-25: To the irrelevant, immaterial speculative conclusion and finding of what might happen under an imaginery set of circumstances unrelated to this employer, this union, and this contract.

No. 8, Page 7, Lines 26-31: To the conclusion and finding that an employee who leaves the company, who ceases to be a union member, and who then returns to employment during the life of the same contract is in the same relative position as any new employee who is not a member of the union.

No. 9, Page 7, Lines 33-43: To the conclusions about the construction of the contract.

No. 10, Page 7, Lines 33-43: To the finding that Section 3 of Article XIV does not conform to the requirements of Section 8 (a) (3) of the Act.

No. 11, Page 7, Lines 43-48: To the conclusion and finding that "it cannot be determined that they joined the Union voluntarily."

No. 12, Page 7, Lines 43-48: To the finding that the language of Sec. 3 of Article XIV tends to "compel membership" without distinction from the clear and obvious "maintenance of membership" which is legally permissible.

No. 13, Page 7, Lines 43-48: To the apparent confusion extant in the mind of the Trial Examiner over the various kinds of transfers involved in this

ase, and his failure to clearly define what transfers ne was talking about nor did he distinguish between he several kinds of transfers.

No. 14, Page 7, Lines 48-52: To the conclusion nd finding that the provisions of Section 3 of Arti-le XIV violates the Act because it coerces employ-es into doing that which under Section 7 of the Act hey have a right to refrain from doing.

No. 15, Page 7, Lines 52-59: To the finding that he Company discriminated in regard to hire and enure of employment in violation of Section 8 (a) (3) of the Act.

No. 16, Page 7, Lines 52-59: To the finding that he Union caused such discrimination in violation of Section 8 (b) (2).

No. 17, Page 7, Lines 52-59: To the finding that he Company violated Section 8 (a) (1) of the Act because of the prior finding that it had violated Sec-ion 8 (a) (3).

No. 18, Page 7, Lines 52-59: To the finding that he Union violated Section 8 (b) (1) (A) of the Act because of the prior finding that it had violated Sec-ion 8 (b) (2).

No. 19, Page 8, Lines 8-12: To the inference, con-clusion, and finding that Pense ceased being a com-mitteeman because he ceased paying his dues.

No. 20, Page 8, Line 53, to Page 9, Line 3: To he conclusion and finding that the Union was dis-pleased with Pense's action.

No. 21, Page 8, Line 53, to Page 9, Line 3: To the conclusion and finding that members in Pense's de-

partment undertook to replace Pense because the Union was displeased with Pense's action.

No. 22, Page 8, Line 53, to Page 9, Line 3: To the inference, conclusion, and finding that "quite a number" of members believed that they were withdrawing from the Union instead of just cancelling their dues deduction authorization.

No. 23, Page 8, Line 53, to Page 9, Line 3: To the inference, conclusion, and finding that members in Pense's department sought to replace him because "quite a number of members" thought they were withdrawing from the union instead of just stopping dues deductions.

No. 24, Page 8, Line 53, to Page 9, Line 3: To any and all inferences, conclusions, or findings that the Union knew of the actions of Pense, recited in Lines 45-49, Page 8, prior to the actual testimony other than the fact that Pense had submitted a letter stopping his dues deductions.

No. 25, Page 8, Line 53, to Page 9, Line 3: To any inference, conclusion, or finding that the members in Pense's department sought to replace him because another union was seeking to establish a unit in the plant.

No. 26, Page 8, Line 53, to Page 9, Line 3: To the inference, conclusion, and finding that the Union was displeased with Pense because another union was seeking to establish a unit in the plant.

No. 27, Page 9, Lines 3-5: To the inference, conclusion, and finding that Hobb heard rumors about Pense's actions as set forth in Lines 45-49, Page 8, when in fact Hobb only heard about the letter Pense

submitted in his own behalf and knew of no other activity whatsoever involving Pense.

No. 28, Page 9, Line 60: To the finding that Pense tore off the check-off authorization before handing the application to King.

No. 29, Page 10, Lines 1-3: To the conclusion that Pense believed the Union might react unfavorably.

No. 30, Page 10, Lines 7-8: To the conclusion and finding that a new typed application card was submitted to Ursino in a letter.

No. 31, Page 10, Lines 23-27: To the finding that the application card submitted to Ursino was the application card acted upon by the Local Lodge.

No. 32, Page 10, Lines 36-38: To the finding that Hobb told the Executive Board about Pense's actions in typing his letter revoking his dues deduction authorization.

No. 33, Page 11, Lines 2-5: To the inference that the Union was obligated to tell the Company that Pense had tendered dues or initiation fees.

No. 34, Page 11, Lines 2-5: To the inference that Pense made a timely offer of the dues required to maintain his membership or his employment.

No. 35, Page 12, Lines 47-52: To the conclusion, inference, and finding that there appeared to be some ill feelings against Pense for reasons other than his failure to pay dues.

No. 36, Page 12, Lines 47-52: To the conclusion that lack of uniform application of the Constitution is related to the "true reason" for dropping Pense from membership.

No. 37, Page 13, Lines 2-4: To the inference and the finding that Pense had aggrieved the Union.

No. 38, Page 13, Lines 2-4: To the inference and finding that the Union dropped Pense from the rolls because it was aggrieved.

No. 39, Page 13, Lines 4-6: To the finding that Pense was actually deprived of membership because of the circumstances surrounding his cancellation of his dues deduction authorization.

No. 40, Page 13, Lines 6-9: To the finding that the Union caused Pense's discharge because of the circumstances surrounding his cancellation of his dues deduction authorization.

No. 41, Page 13, Lines 6-9: To the finding that the Union violated Section 8 (b) (1) (A) and Section 8 (b) (2) of the Act.

No. 42, Page 13, Lines 11-15: To the conclusion and finding that Pense was denied membership for a reason other than his failure to tender the dues and initiation fee uniformly required as a condition of acquiring membership.

No. 43, Page 13, Lines 30-48: To the finding that it was obvious that the Union in fact requested his discharge for a reason other than his failure to pay his dues because of the Union's displeasure at Pense for aiding employees to revoke their dues deductions.

No. 43A, Page 13, Lines 30-48: To the finding that Pense's case was no different from that of Wilson, Goetz, and Bitetti except for the Union's displeasure at Pense.

No. 44, Page 13, Lines 48-50: To the finding and conclusion that the Business Agent (Ursino) had taken Ainsworth under his wing.

No. 45, Page 13, Lines 48-50: To the finding and conclusion that Ainsworth would not have appeared before the Executive Board if the Business Agent (Ursino) had not taken him under his wing and steered Ainsworth.

No. 46, Page 13, Lines 50-55: To the finding that the real reason for rejection of Pense's application was the Union's displeasure with his conduct and not in any event either his failure to tender the required dues or an initiation fee.

No. 47, Page 13, Lines 57-61: To the observation that the Union stood silent for nearly 30 days before again insisting on giving the contract effect, and the implied inference that some sinister motive caused the Union not to explain the passage of time.

No. 48, Page 14, Lines 2-5: To the inference, conclusion, or finding that the delay was acquiesced in by the Union for some reason.

No. 49, Page 14, Lines 7-12: To the finding that the Union caused the discharge of Pense for reasons other than Pense's failure to tender the dues and initiation fee.

No. 50, Page 14, Lines 7-12: To the finding that the Union caused the Company to discriminate against Pense and thereby violated Section 8 (b) (2) of the Act.

No. 51, Page 15, Lines 16-24: To the finding that a whole phrase is void (Section 3 of Article XIV).

No. 52, Page 15, Lines 33-37: To the finding that the provision for mandatory payment of dues by employees when re-employed in the unit is illegal and void even though they had been members when leaving the unit.

No. 53, Page 17, Lines 34-42: To the recommendation that the Union withdraw any and all objections it may have to the reinstatement of Pense with restoration of his previous seniority and other rights and privileges.

No. 54, Page 17, Lines 42-49: To the recommendation that the Union make Pense whole.

No. 55, Page 17, Line 60, to Page 18, Line 12: To the second conclusion of law in its entirety.

No. 56, Page 18, Lines 14-17: To the third conclusion of law in its entirety.

No. 57, Page 18, Line 23, Page 19, entire page, to Page 20, Line 16: To the recommendations in their entirety because of each and all of the exceptions noted hereinbefore.

Los Angeles, California, October 1, 1954.

Respectfully submitted,

/s/ A. C. McGRAW,

Grand Lodge Representative, International Association of Machinists, For Itself and in Behalf of its Subordinate Local Lodge No. 1254.

United States of America

Before the National Labor Relations Board

Case No. 21-CA-1911

CONVAIR, A DIVISION OF GENERAL DYNAMICS CORPORATION

and

CHARLES E. PENSE, An Individual

Case No. 21-CB-561

INTERNATIONAL ASSOCIATION OF MACHINISTS, GUIDED MISSILE LODGE 1254

and

CHARLES E. PENSE, An Individual

DECISION AND ORDER

On August 23, 1954, Trial Examiner James R. Hemingway issued this Intermediate Report in the above-entitled proceeding, finding that the Respondents[1] had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirma-

[1] At the suggestion of Convair, a Division of General Dynamics Corporation, the complaint was amended at the hearing to substitute it as the Respondent Company herein in place of Consolidated Vultee Corporation, Pomona Division, the Respondent Company originally named in the complaint.

tive action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the Respondents had not engaged in certain other unfair labor practices alleged in the complaint. Thereafter, the Respondent Union and the General Counsel filed exceptions to the Intermediate Report and supporting briefs. The Respondent Union's request for oral argument is hereby denied as the record, the exceptions and briefs, in our opinion, adequately present the issues and the positions of the parties.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the exceptions, modifications, and additions noted below.

1. The Trial Examiner found that the Respondent Company violated Section 8 (a) (3) and (1) of the Act, and the Respondent Union violated Section 8 (b) (2) and (1) (A) of the Act, by maintaining certain illegal provisions in the union-security section of the contract to which they were parties during the period covered by the complaint. He also found that the Respondents did not violate the Act because of certain other union security provisions in the contract in question.

We agree with the Intermediate Report in the

instant connection to the extent that it finds that the Respondents violated the Act in the manner found by the Trial Examiner. The union-security provisions of the contract relied upon here, which is the maintenance-of-membership variety, are fully set forth in the Intermediate Report.[2] In brief, they require an employee who is separated from the bargaining unit covered by the contract, at a time when he is a member of the Respondent Union, to resume paying membership dues immediately upon his reemployment within the bargaining unit. Thus, an employee who quits his employment or is transferred from the bargaining unit while a member of the Respondent Union must, as a condition of reemployment in any capacity within the unit, resume paying union dues even though he has resigned his union membership in the meantime, a period during which he could not, as an employee outside the bargaining unit covered by the contract, legally have been required by the contract to maintain his union membership. We share the Trial Examiner's opinion that for purposes of this case such an employee, upon the occasion of his reemployment, stands in the same shoes as one being hired by the Respondent Company for the first time, who has never been a member of the Respondent Union, and that the existence of a contractual obligation upon an employee in that position to pay union dues beginning with the commencement of his employment

[2] The contract provided, inter alia, for withdrawal from the Respondent Union between August 1 and August 15 of the currently effective yearly period.

would be plainly violative of the Act. While the evidence does not indicate whether the Respondents enforced the provisions in question in an unlawful manner, the Respondent Union concedes in its brief that "In all situations except a quit, when, as, and if a person returned to the unit, he was obligated to resume the payment of dues * * * "[3] It is also significant that the provisions in question were continued in a new agreement executed by the Respondent in February 1954. On the basis of the foregoing, and the entire record, we find, as the Trial Examiner did, that by maintaining in existence the unlawful provisions in question during the critical period herein, the Respondent Company violated Section 8 (a) (1) and (3) of the Act, and the Respondent Union violated Section 8 (b) (1) (A) and (2) of the Act.[4]

Contrary to the Trial Examiner, we find that the Respondents also violated the Act by maintaining

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[3] Member Murdock, were it not for the apparent agreement of Respondent's representative, would seriously question the construction of the Trial Examiner of the contractual provision in question.

[4] Permanente Steamship Corporation, 107 NLRB No. 234; Ebasco Services Incorporated, 107 NLRB No. 143. That "quits" alone may have in fact, been treated as "brand new employees" by the Respondents, when rehired within the bargaining unit, as the Respondent Union asserts in its brief, is immaterial in view of all the above. We accordingly deem it unnecessary to reopen the record for the purpose of receiving testimony on that matter, as requested by the Respondent Union.

in their contract the union-security provision requiring the payment of general union assessments, in addition to initiation fees and monthly union dues, as a condition of employment.[5] Such a contractual provision, threatening, as it does, loss of employment to any employee who fails to pay union assessments, goes beyond the permissive language of Section 8 (a) (3) of the Act and has been held to act as restraint upon employees desiring to refrain from union activities within the meaning of Section 7 of the Act.[6] Accordingly, it follows that by retaining that provision in their contract the Respondent Company thereby violated Section 8 (a) (1) of the Act and the Respondent Union thereby violated Section 8 (b) (1) (A) of the Act. However, because the record shows that the Respondents did not attempt to enforce the unlawful provision, and fails to establish that they intended

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[5] The Trial Examiner, while finding this provision to be void and illegal, concluded that it did not serve as the basis for an unfair labor practice finding.

[6] See National Malleable and Steel Castings Company, 99 NLRB 737; The Great Atlantic & Pacific Tea Company (Pittsburgh Bakers) 110 NLRB No. 146; Amalgamated Local 286, International Union, United Automobile Workers of America, AFL, 110 NLRB No. 53. In so finding we reject the waiver theory applied by the Trial Examiner in the Respondent's favor. The provisions in the Act which guarantee employees certain rights, and outlaw the restraint of employees in the exercise of those rights by employers and unions, are not subject to the qualification which the Trial Examiner would read into the Act.

to utilize it during the critical period herein,[7] we do not find that the Respondents' conduct in this regard otherwise violated the Act, as alleged in the complaint.[8]

2. For the reasons set forth in the Intermediate Report, the Trial Examiner found that the Respondent Union, in causing Charles E. Pense's discharge on January 15, 1954, violated Section 8 (b) (2) and 8 (b) (1) (A) of the Act, but that the Respondent Company, in discharging Pense at the Respondent Union's request, did not violate the Act.

The Respondent Union contends that it requested Pense's discharge, pursuant to the union-security section of its contract with the Respondent Company, because of Pense's dues delinquency, and the Respondent Company asserts that it discharged Pense, pursuant to the aforementioned contract, at the Respondent Union's request and upon its representation that Pense was delinquent in his dues. Even were we to accept as true the reasons offered by the Respondents for their conduct vis-a-vis Pense, it is plain, as the complaint alleges, that the action by each of them must be held violative of the Act, unless it was protected by a valid union-security clause. It is therefore necessary to inquire into the validity of the Trial Examiner's finding, to which the General Counsel has excepted, that a

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[7] The 1954 contract between the Respondents does not require the payment of assessments as a condition of employment.

[8] Jandel Furs, 100 NLRB 1390.

valid union-security clause providing for the payment of union dues as a condition of employment was in effect at the time of Pense's discharge.[9]

As already noted, there are provisions in the union-security section of the relevant contract which exceed the limited form of union-security permitted by Section 8 (a) (3) of the Act. In the Trial Examiner's opinion, however, those provisions are severable from, and do not taint, the requirement in the same section for the payment of initiation fees and monthly dues as a condition of employment, thus leaving that portion of the union-security section of the contract available as a defense to a discharge for nonpayment of dues. We are unable to accept this view of the contract by the Trial Examiner. All the provisions in question are related in character and are integral parts of the union-security arrangement devised by the Respondents. Viewing the union-security section of the contract as a whole, we find that the lawful

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[9] In view of this holding, the Trial Examiner found it necessary to decide whether Pense's nonpayment of dues entered into the Respondent Union's request for his discharge and concluded, as in effect alleged in the complaint, that it did not. The Trial Examiner accordingly found that the Respondent Union violated the Act as noted above. As for the Respondent Company, the complaint alleges only that it violated the Act by discharging Pense at the Respondent Union's request at a time when no valid union-security provision was in effect justifying such conduct.

requirements therein[10] are so interwoven with the unlawful ones as to be tainted with illegality themselves. For this reason, we find that no valid union-security clause is available as a defense to the discharge of Pense.[11]

Accordingly, we find that the Respondent Company discriminatorily discharged Pense in violation of Section 8 (a) (3) and 8 (a) (1) of the Act, and that the Respondent Union caused Pense's discharge in violation of Section 8 (b) (2) and 8 (b) (1) (A) of the Act.[12]

The Remedy

Having found that the Respondents engaged in the unfair labor practices set forth above, we shall order that they cease and desist therefrom and that they take certain affirmative action designed to effectuate the policies of the Act.

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[10] The requirement for the payment of initiation fees and monthly dues is, of course, a valid one when considered in isolation.

[11] Local 803, International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, AFL, 107 NLRB No. 212. See also such cases as John Deere Planter Works of Deere & Company, 107 NLRB No. 306, and International Harvester Company, 95 NLRB 730, wherein the Board held union-security clauses, otherwise valid, to be illegal because they required the payment of general union assessments as a condition of employment.

[12] In view of our disposition of this aspect of the case, we deem it unnecessary to pass upon the validity of the Trial Examiner's pretext finding.

1. We have found that the Respondent Company discriminated against Charles E. Pense and that the Respondent Union caused such discrimination. We shall order that the Respondent Company offer Pense immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority or other rights and privileges.[13] With the exception noted hereinafter, we shall also order that the Respondent Company and the Respondent Union jointly and severally make Pense whole for any loss of pay suffered as a result of the discrimination practiced against him. Because the Trial Examiner did not find that the Respondent Company discriminated against Pense, we shall not hold the Respondent Company accountable for any back pay which accrued during the period between the issuance of the Intermediate Report and our Decision and Order. In the circumstances, we believe that the policies of the Act will best be effectuated by ordering the Respondent Union to assume full liability for the back pay accruing to Pense during this

[13] Alleged copies of certain correspondence between the parties herein submitted to the Board subsequent to the issuance of the Intermediate Report indicate that the Respondent Union has notified the Respondent Company and Pense that it has no objection to the Respondent Company's reemployment of Pense and that the Respondent Company has made an offer of employment to Pense, which was rejected. However, as these are not facts established in the record itself, we shall issue our usual remedial order, leaving such matters to the compliance stage of this proceeding.

period.[14] Back pay shall be computed in a manner consistent with the Board's policy set forth in F. W. Woolworth Co.[15]

We shall also order the Respondent Company to make available to the Board, upon request, payroll and other records to facilitate the checking of the amount of back pay due. In addition, we shall direct that the Respondent Union, in writing, notify the Respondent Company, and furnish copies to the employee involved, that it has no objection to the employment of Pense. The Respondent Union shall not be liable for any back pay accruing after 5 days from the date *of* such notices are given.

2. In view of our finding that the Respondents violated the Act by maintaining in existence illegal union-security provisions, certain of which were included in the 1954 agreement between the Respondent,[16] we shall order the Respondents to cease and desist from agreeing to, continuing in force, or giving effect to union-security provisions not authorized by Section 8 (a) (3) of the Act.

Order

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations

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[14] Cf. Utah Construction Co., 95 NLRB 196, and Pacific American Shipowners Association, et al., 98 NLRB 582.

[15] 90 NLRB 289.

[16] Except for the fact that the payment of general assessments is not made a condition of employment, the union-security provisions of the 1954 contract are the same as those in the contract before us.

Act, as amended, the National Labor Relations Board hereby orders that:

1. The Respondent, Convair, A Division of General Dynamics Corporation, its officers, agents, successors, and assigns shall:

a. Cease and desist from:

(1) Agreeing to, continuing in force, or giving effect to illegal union-security provisions in any collective bargaining agreement with International Association of Machinists, Guided Missile Lodge 1254.

(2) Encouraging membership in International Association of Machinists, Guided Missile Lodge 1254, or in any other labor organization of its employees, by discriminating as to its employees in regard to their hire or tenure of employment, or any term or condition of their employment.

(3) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the Act.

b. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(1) Offer to Charles E. Pense immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges.

(2) Jointly and severally with International Association of Machinists, Guided Missile Lodge 1254, make Charles E. Pense whole for any loss of pay he may have suffered by reason of their discrimination against him, in the manner set forth in Section V, entitled "The remedy."

(3) Upon request, make available to the Board or its agents, for examination and copying, all pertinent records necessary to analyze the amount of back pay due under this Order.

(4) Post in conspicuous places at its place of business in Pomona, California, in all locations where notices to employees are customarily posted, copies of the notice attached hereto and marked "Appendix A."[17] Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by the Respondent Company's representative, be posted immediately upon receipt thereof, and be maintained by it for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent Company to insure that said notices shall not be altered, defaced, or covered by any other material.

(5) Notify the Regional Director for the Twenty-first Region, in writing, within ten (10) days from

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[17] In the event this Order is enforced by a decree of a United States Court of Appeals, this notice shall be amended by substituting for the words "A Decision and Order," the words, "A Decree of the United States Court of Appeals, Enforcing an Order."

the date of this Order, what steps it has taken to comply herewith.

2. The Respondent, International Association of Machinists, Guided Missile Lodge 1254, its officers, agents, successors, and assigns, shall:

a. Cease and desist from:

(1) Agreeing to, continuing in force, or giving effect to illegal union-security provisions in any collective bargaining agreement with Convair, A Division of General Dynamics Corporation, its officers, agents, successors, or assigns.

(2) Causing or attempting to cause Convair, A Division of General Dynamics Corporation, its officers, agents, successors, and assigns, to discriminate against Charles E. Pense or any other employee in violation of Section 8 (a) (3) of the Act.

(3) In any other manner restraining or coercing employees of Convair, A Division of General Dynamics Corporation, its successors or assigns, in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8 (a) (3) of the Act.

b. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(1) Jointly and severally with Convair, A Division of General Dynamics Corporation, make Charles E. Pense whole for any loss of pay which he may have suffered by reason of their discrimi-

nation against him, in the manner set forth in Section V, entitled "The remedy."

(2) Notify the Respondent Company and Charles E. Pense, in writing, that it has no objection to the employment of Pense and that it will not in the future request the discharge of said Pense or any other employee for a reason other than a failure to tender monthly union dues or initiation fees uniformly required to acquire or maintain membership in the Respondent Union as a condition of employment, under an agreement authorized by Section 8 (a) (3) of the Act.

(3) Post at its offices and meeting halls in Pomona, California, copies of the notice attached hereto and marked "Appendix B."[18] Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by an authorized representative of the Respondent Union, be posted by it immediately upon receipt thereof, and be maintained by it for a period of at least sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Union to insure that such notices are not altered, defaced, or covered by any other material.

(4) Mail to the Regional Director for the Twenty-first Region signed copies of the notice attached hereto as Appendix B, for posting, the Respondent Company willing, at its place of business at

[18] Ibid.

Pomona, California, in places where notices to employees are customarily posted. Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being signed as provided in the preceding paragraph of of this Order, be forthwith returned to the Regional Director for posting.

(5) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps it has taken to comply herewith.

Dated, Washington, D. C. March 22, 1955.

[Seal] GUY FARMER, Chairman
ABE MURDOCK, Member
IVAR H. PETERSON, Member
PHILIP RAY RODGERS, Member
National Labor Relations Board

APPENDIX A

Notice to All Employees Pursuant to a Decision and and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We will not agree to, continue in force, or give effect to illegal union-security provisions in any collective bargaining agreement with International Association of Machinists, Guided Missile Lodge 1254.

We will not encourage membership in International Association of Machinists, Guided Missile Di-

vision 1254, or in any other labor organization of our employees, by discriminating against our employees in regard to their hire or tenure of employment, or any term or condition of their employment.

We will not in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the Act.

We will offer to Charles E. Pense immediate and full reinstatement to his former or substantially equivalent position without prejudice to any seniority or other rights and privileges previously enjoyed, and make him whole for any loss of pay suffered as a result of the discrimination against him.

All our employees are free to become, remain, or to refrain from becoming or remaining members in good standing in the above-named Union or any other labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3 of the Act.

Convair, a Division of General Dynamics Corporation
(Employer)

Dated.....

By.....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

APPENDIX B

Notice to All Members of International Association of Machinists, Guided Missile Lodge 1254 Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

We will not agree to, continue in force, or give effect to illegal union-security provisions in any collective bargaining agreement with Convair, a Division of General Dynamics Corporation, its officers, agents, successors, or assigns.

We will not cause or attempt to cause or attempt to cause Convair, a Division of General Dynamics Corporation, its officers, agents, successors, and assigns, to discriminate against Charles E. Pense or any other employee in violation of Section 8 (a) (3) of the Act.

We will not in any other manner restrain or coerce employees of Convair, a Division of General Dynamics Corporation, its successors or assigns, in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of

employment, as authorized by Section 8 (a) (3) of the Act.

We will notify the above named corporation, in writing, and furnish a copy of such notification to Charles E. Pense, that we have no objection to his employment by said company.

We will make Charles E. Pense whole for any loss of pay suffered as a result of the discrimination against him.

International Association of Machinists,
Guided Missile Lodge 1254
(Labor Organization)

Dated.....

By.....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Affidavit of Service by Mail and Postal Return Receipts Attached.

In the United States Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS, GUIDED MISSILE LODGE 1254,
Respondent.

CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.84, Rules and Regulations of the National Labor Relations Board—Series 6, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a consolidated proceeding had before said Board, entitled, "Convair, A Division of General Dynamics Corporation and Charles E. Pense, An Individual", Case No. 21-CA-1911; "International Association of Machinists, Guided Missile Lodge 1254 and Charles E. Pense, An Individual", Case No. 21-CB-561 before said Board, such transcript including the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Stenographic transcript of testimony taken before Trial Examiner James R. Hemingway on July 12 and 13, 1954, together with all exhibits introduced in evidence.

2. Copy of Trial Examiner Hemingway's Intermediate Report and Recommended Order (annexed to item 6 hereof) and copy of order transferring cases to the National Labor Relations Board, both dated August 23, 1954, together with affidavit of service and United States Post Office return receipts thereof.

3. Respondent Union's exceptions to the Intermediate Report received October 4, 1954.

4. Respondent Union's request for oral argument received October 4, 1954. (Request denied. See page 1, paragraph 1 of Decision and Order).

5. General Counsel's exceptions to the Intermediate Report received October 4, 1954.

6. Copy of Decision and Order issued by the National Labor Relations Board on March 22, 1955, with Intermediate Report and Recommended Order annexed, together with affidavit of service and United States Post Office return receipts thereof.

7. Copy of affidavit of service of Decision and Order mailed to Charles E. Pense on April 12, 1955.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor

Relations Board in the city of Washington, District of Columbia, this 18th day of May, 1956.

[Seal] /s/ FRANK M. KLEILER,
Executive Secretary,
National Labor Relations
Board.

[Endorsed]: No. 15099. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. International Association of Machinists, Guided Missile Lodge 1254, Respondent. Transcript of Record. Petition for Enforcement of an Order of the National Labor Relations Board.

Filed: May 22, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15099

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS, GUIDED MISSILE LODGE 1254,
Respondent.

PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Secs. 151, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondent, International Association of Machinists, Guided Missile Lodge 1254, its officers, agents, successors, and assigns. The consolidated proceeding resulting in said order is known upon the records of the Board as "Convair, A Division of General Dynamics Corporation and Charles E. Pense, An Individual, Case No. 21-CA-1911"; "International Association of Machinists, Guided Missile Lodge 1254

and Charles E. Pense, An Individual, Case No. 21-CB-561."

In support of this petition the Board respectfully shows:

(1) Respondent is a labor organization engaged in promoting and protecting the interests of its members in the State of California, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on March 22, 1955, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent, its officers, agents, successors, and assigns. On the same date, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's representative.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceeding before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that

this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing in whole said Order of the Board, and requiring Respondent, its officers, agents, successors, and assigns, to comply therewith.

Dated at Washington, D. C., this 10th day of April, 1956.

/s/ MARCEL MALLET-PREVOST,
Assistant General Counsel, National Labor Relations Board.

Certificate of Service Attached.

[Endorsed]: Filed Apr. 12, 1956. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

RESPONDENT'S ANSWER TO PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States Court of Appeals for the Ninth Circuit

The Respondent, International Association of Machinists, Guided Missile Lodge 1254, respectfully resists the National Labor Relations Board's Petition for Enforcement of its Order, known upon its

records as "International Association of Machinists, Guided Missile Lodge 1254 and Charles E. Pense, an Individual, Case No. 21-CB-561", and in answer to its Petition, the Respondent respectfully answers:

(1) The Respondent admits that it is a labor organization engaged in promoting and protecting the interests of its members in the State of California, within this Judicial Circuit.

(a) Respondent denies that any unfair labor practice occurred.

(b) The Respondent admits that this Court has jurisdiction of the Board's Petition for Enforcement by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) The Respondent admits that upon due proceedings had before the Board in said matter, the Board, on March 22, 1955, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent, its officers and agents, successors and assigns; and that, on the same date, the Board's Decision and Order was served upon Respondent in the style, form, and manner, therein stated.

Wherefore, the Respondent prays this Honorable Court that it cause notice of the filing of this answer to be served upon the Petitioner; that this Court take jurisdiction of the proceeding, and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon

the Order made thereupon a decree denying in whole said Order of the Board.

Dated at Washington, D. C., this 25th day of April, 1956.

/s/ PLATO E. PAPPS,
Chief Counsel, International
Association of Machinists.

[Endorsed]: Filed Apr. 30, 1956. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

STATEMENT OF POINTS UPON WHICH THE NATIONAL LABOR RELATIONS BOARD INTENDS TO RELY

The Board properly found that the Union violated Section 8(b)(2) and 8 (b)(1)(A) of the National Labor Relations Act (61 Stat. 136, 29 U.S.C., Sec. 151 et seq.), by maintaining an illegal union-security agreement with Convair, a Division of General Dynamics Corporation, and by causing that company to discharge an employee pursuant to that agreement.

Dated at Washington, D. C., this 18th day of May, 1956.

/s/ MARCEL MALLET-PREVOST,
Assistant General Counsel, National
Labor Relations Board.

[Endorsed]: Filed May 21, 1956. Paul P. O'Brien, Clerk.

Before the National Labor Relations Board
Twenty-First Region

Case No. 21-CA-1911

In the Matter of:

GENERAL DYNAMICS CORPORATION,

and

CHARLES E. PENSE, an Individual.

Case No. 21-CB-561

In the Matter of:

INTERNATIONAL ASSOCIATION OF MACHINISTS, GUIDED MISSILE LODGE 1254,

and

CHARLES E. PENSE, an Individual.

Hearing Room No. 1, Room 704, 111 West Seventh Street, Los Angeles, California. Monday, July 12, 1954.

Pursuant to notice, the above-entitled matter came on for hearing at 10:00 o'clock, a.m.

Before: James R. Hemingway, Trial Examiner.

Appearances: Ernest L. Heimann, 111 West Seventh Street, Los Angeles, 14, California, appearing

on behalf of the General Counsel of the National Labor Relations Board. [1*]

Charles E. Pense, 6526-A Marbrisa Avenue, Huntington Park, California, appearing on behalf of himself.

Robert B. Watts and C. C. Sawyer, 3165 Pacific Highway, San Diego 12, California; and H. D. Filloon, P. O. Box 1011, Pomona, California, appearing on behalf of General Dynamics Corporation.

A. C. McGraw, Room 600 Van Nuys Building, 210 West Seventh Street, Los Angeles 14, California, appearing on behalf of the International Association of Machinists, Guided Missile Lodge 1254.

PROCEEDINGS

* * * * *

Mr. Heimann: At this time, Mr. Examiner, I would like to offer the formal exhibits for the General Counsel being:

Exhibit 1-A, the Charge against the International Association of Machinists, Guided Missile Lodge No. 1254 which I will refer to hereafter as the union;

Exhibit 1-B being the Charge against Consolidated [5] Vultee Aircraft Corporation, Pomona Division, which I will refer to hereafter as the company;

Exhibit 1-C being Affidavit of Service of the ini-

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* Page numbers appearing at foot of page of original Reporter's Transcript of Record.

tial C Letter and copy of Charge on the Union with return receipt attached;

Exhibit 1-D being Affidavit of Service of initial C Letter and copy of Charge on the Company with return receipt attached;

Exhibit 1-E being Order Consolidating the two cases that are the subject of this case and Notice of Hearing dated April 30, 1954;

Exhibit 1-F, being the Consolidated Complaint in these two cases, dated April 30, 1954;

Exhibit 1-G being the Affidavit of Service of Order Consolidating the cases and Notice of Hearing, Consolidated Complaint and copies of Charges with return receipts attached and signed on behalf of the Company, the Union and Charles E. Pense;

Exhibit 1-H being an Order Rescheduling Hearing, rescheduled from May 24 to July 12, 1954;

Exhibit 1-I being the Affidavit of Service of Order Rescheduling Hearing with return receipts attached, signed by and on behalf of the Company, the Union and Charles E. Pense;

Exhibit 1-J being an Order Extending Time for Filing of [6] Answer, dated May 13, 1954.

Exhibit 1-K being Affidavit of Service of Order Extending Time for Filing of Answer with return receipts attached, signed by and on behalf of the Company, the Union and Charles E. Pense;

Exhibit 1-L being the Answer of the Union; and 1-M being the Answer of the Company.

I now offer General Counsel's Exhibit 1-A through 1-M in evidence.

* * * * *

Trial Examiner: All right, General Counsel's Exhibit 1, including all parts from A to M, inclusive, is received in evidence. * * * * * [7]

Mr. Sawyer: In view of the matter contained in the company's answer and the actual facts of the situation so far as the corporate name of the company is concerned, we think appropriate to move, make a motion at this time that General Dynamics Corporation be submitted as respondents herein in place of Consolidated Vultee Aircraft Corporation for the reason that, effective as of the close of business April 30, 1954, as a result of a merger, Consolidated Vultee Aircraft Corporation was merged into and with General Dynamics Corporation and, as a result thereof, the name of Consolidated Vultee Aircraft Corporation was changed to General Dynamics Corporation.

* * * * *

Trial Examiner: All right. The Complaint and the Answers, then, are amended in accordance with the motion. The motion is granted. [8]

* * * * *

Mr. Heimann: Mr. Examiner, at this time I would like to offer the following stipulations:

Number one, that the commerce facts as stated in the Answer of the company in Paragraph 1 and that these facts should be considered the true facts rather than the facts alleged in Paragraph 1 of the Consolidated Complaint.

Trial Examiner: Let's have each one agreed on as they go ahead if they are distinct.

Do you so stipulate? [9]

Mr. McGraw: We accept any stipulation the company prepares concerning its own business.

Trial Examiner: Mr. Sawyer?

Mr. Sawyer: Yes.

* * * * *

Mr. Heimann: My next stipulation is that Mr. Pense, the charging party was employed by the company in San Diego from March 9, 1951, until his transfer to Pomona on January 19, 1953, and by what was then known as Convair's Guided [10] Missile Division in Pomona from January 19, 1953, until his discharge on January 15, 1954.

Mr. Sawyer: We so stipulate.

Mr. McGraw: We join in the stipulation.

* * * * *

Mr. Sawyer: By way of explanation, I note that reference is made to the Guided Missile Division, and to explain that, when the operations at Pomona, California, were first started, it was originally named Guided Missile Division.

Thereafter, or a very short time thereafter, it was changed to Pomona Division so that the reference here to Guided Missile Division is the same as the references in the company's Answer to the Pomona Division.

Trial Examiner: All right. Is that so stipulated?

Mr. Heimann: That is satisfactory. I stipulate to that.

Mr. McGraw: So stipulate.

Mr. Heimann: The next stipulation, Pense was a member of the Guided Missile Lodge 1254 since on or about October 1, 1952. He remained a member

of Lodge 1254 and paid dues through check-off until and including August 1953. [11]

Mr. McGraw: We so stipulate.

Mr. Sawyer: In regard to that stipulation, we stipulate that based on our information and belief, Mr. Pense was a member of said union and we do stipulate in regard to the check-off of dues by the company.

* * * * *

Mr. Heimann: Now, as I take it, for the purpose of decision, that can be taken as an admission of what I stated by the company, in other words, that everything is covered.

Trial Examiner: I take it that the company accepts the fact to be that he was a member and doesn't require proof.

Mr. Sawyer: That is correct.

Mr. Heimann: Fine.

The next stipulation, Pense revoked his check-off authorization by letter dated August 1, sent registered to the company and the union. This letter was received by the company on August 6th and by the union on or about the same date and, in any case, prior to August 15th. All these dates are referring to 1953.

Mr. McGraw: We so stipulate. [12]

* * * * *

Mr. Heimann: Next stipulation, Pense did not pay dues for September, 1953, or any months thereafter and did not tender payment of his dues until January 7, 1954.

Trial Examiner: Did not tender, you say?

Mr. Heimann: Did not tender payment of dues.

Mr. McGraw: I think we have one slight diversion here, counsel. In characterizing this payment as a payment of dues, I think it might be wrong and I'm sorry I didn't notice it before. Certainly, he didn't pay any dues after September and made no offer and that the first offer of money was on January 7, 1954. We have no argument there. We say that was, in effect, a reinstatement that he was offering if there is any distinction to be made.

Mr. Heimann: I'm willing to accept the wording, [13] "did not tender payment of any money until January 7, 1954."

Mr. McGraw: Good deal.

Trial Examiner: And the company, will you stipulate?

Mr. Sawyer: In agreeing to that stipulation, the respondent would, of course, have no knowledge of Pense's relationship with the union in regard to when he paid dues and whether or not they were payment of dues within the meaning of the contract here involved.

We believe that the stipulation when it refers to the payment of dues might well say payment of dues in accordance with the constitution and by-laws of the union since that is the contract requirement.

Trial Examiner: You mean that Pense did not pay dues in accordance with the constitution and by-laws of the union?

Mr. Sawyer: Since that contract requirement.

Trial Examiner: For September or thereafter, is that what you mean?

Mr. Sawyer: Right.

If I may have the stipulation amended to include that phrase, the respondent agrees on this basis that it was advised by Lodge 1254 in writing on or about December 8, 1953, again, on or about December 17, 1953, and, again, on or about January 15, 1954, that Charles E. Pense had failed to pay union dues in accordance with the constitution and by-laws of Lodge 1254. [14]

Our attempt is to agree with this stipulation based upon giving the basis of our agreement. That is our attempt.

Trial Examiner: Is Mr. Sawyer's proposed amendment acceptable to you, Mr. Heimann?

Mr. Heimann: Yes, it is.

Mr. McGraw: It is to us, too.

Mr. Trial Examiner, actually what he is doing is putting in words—maybe I was silly for assuming that—certainly at all times we are talking about the dues due under the constitution or by-laws under the contract, or both, and we are not talking about anything outside of that.

* * * * *

Trial Examiner: Do you have any more stipulations?

Mr. Heimann: Oh, yes. We will try to cover most of the case by stipulation, Mr. Examiner.

On January 7, 1954, Pense handed a check for $17.50 to Dave Provan, P-r-o-v-a-n, shop committeeman of the union. Provan phoned the office of

the union and was told that Pense's [15] dues came too late since he had been dropped from membership and the check could not be accepted until Pense's reinstatement was voted upon by the union's membership.

Provan related this message to Pense and returned the check.

* * * * *

Mr. Sawyer: We have no information to the contrary and therefore agree.

Trial Examiner: All right.

Mr. Heimann: On the same day, or the next day, Pense went to see John King, financial secretary of the union, and offered to pay back dues in the amount of $17.50. King repeated substantially the same information that had been given Provan by the union office and King told Pense in order to get reinstated he had to fill out an application.

Pense filled out that application.

Mr. McGraw: We so stipulate.

Mr. Sawyer: The company has no information to the contrary as to these things that went on between Pense and the union so we stipulate. [16]

Mr. McGraw: We agree it was none of the company's business.

Mr. Heimann: The next stipulation, on December 7, 1953, the union sent to the company a letter which I will identify as General Counsel's Exhibit No. 3 which was sent to the company on or about the date of that letter and received by the company on December 8, 1953.

Mr. Sawyer: We so stipulate, this being the

quoted wording referred to in respondent's Answer, Paragraph 5, as being a written request received by respondent on December 8, 1953.

Mr. McGraw: We accept the stipulation.

Mr. Heimann: I accept the stipulation. And, of course, I will enter the copies in evidence.

Mr. McGraw: Counsel, I notice you had one other document a few moments ago that you were reserving to offer and at that time you did not identify that. Is it my understanding that that was to be G.C. No. 2?

Mr. Heimann: That is correct, that refers to revocation of the check-off by Mr. Pense.

Mr. McGraw: All right, thank you.

Mr. Heimann: The next stipulation, on December 17, 1953, the union sent to the company a letter which I will offer in evidence as G.C. 4 and which was received by the company in due course of mail. [17]

Mr. Sawyer: We agree and so stipulate said letter being the quoted wording referred to in respondent's Answer in Paragraph 5 as being a written request received from Lodge 1254 on or about December 17, 1953.

Mr. McGraw: We accept the stipulation.

* * * * *

Mr. Heimann: The next stipulation, on January 14, 1954, the union held a membership meeting at which the application for reinstatement to union membership of Delbert Ainsworth was accepted.

Trial Examiner: At which the membership, you say, was accepted?

Mr. Heimann: The application for reinstatement to membership.

Mr. McGraw: Is that all? Are you going to offer more?

Mr. Heimann: No, I'm not through yet.

Trial Examiner: Would you spell the name?

Mr. Heimann: A-i-n-s-w-o-r-t-h.

And Pense's application for reinstatement was rejected. [18]

Trial Examiner: So stipulated?

Mr. Heimann: Just a minute.

At the request of Mr. McGraw expressed at the pre-hearing conference, I also offer to stipulate that at that same meeting the applications of others for membership were also acted upon and I'm offering that without conceding the materiality thereof but I agree it is a fact.

Mr. Sawyer: The respondent, based upon the written information referred to in Paragraph 5 of its Answer as having been received by respondent on January 15, 1954, stipulates that at that time it was advised by that writing that such application of Ainsworth had been accepted at a meeting held by the union, by Lodge 1254, held January 14, 1954, and that at that same meeting the application of Mr. Pense had been rejected. Respondent has no evidence to the contrary and does not intend to offer any as to this last matter, namely, that the application of others for membership were also acted upon. The respondent has no knowledge but does not intend to offer any evidence to the contrary and, therefore, on that basis is willing to so stipulate.

Mr. McGraw: Mr. Trial Examiner, we, of course, object to the introduction of this in evidence in any form on the grounds it is immaterial and even when true does not go to prove or disprove any of the issues in the case. We think this is wholly unrelated to the issues and we think that it [19] should be excluded on the grounds, I think, as immaterial and irrelevant.

We do admit, however, that these are facts and we don't dispute them as facts. We object to their admission on the grounds of relevance principally and materiality.

Trial Examiner: In view of the fact that it does tend to support one theory of General Counsel's case I accept the stipulation.

Mr. McGraw: We, of course, take this as an adverse ruling and take exception. [20]

* * * * *

Mr. Heimann: The next stipulation, on January 15, 1954, the union sent to the company a letter which I will offer in evidence as G.C. Exhibit No. 5 and which was received by the company on January 15, 1954.

That is the end of that stipulation.

Mr. McGraw: We so stipulate. [21]

Mr. Sawyer: And the respondent so stipulates, this being the written request referred to in Paragraph 5 of the respondent's letter.

Trial Examiner: The respondent's Answer?

Mr. Sawyer: Respondent's Answer which the respondent therein states was received on or about January 15, 1954.

Mr. Heimann: The next stipulation, Pense was discharged by the company on January 15, 1954, as a result of the union's request for his discharge pursuant to the contract.

Mr. McGraw: We accept the stipulation.

Is that all of that one?

Mr. Heimann: No, I'm adding and I will offer that contract as G. C. Exhibit No. 6.

Mr. McGraw: We accept the stipulation.

Mr. Heimann: The union's request for Pense's discharge pursuant to the contract was the sole reason for Pense's discharge. His work and conduct were satisfactor*ily* at all times.

Mr. Sawyer: Respondent so stipulates, request referred to in the stipulation being the writing referred to in respondent's Answer, Paragraph 5, and the stipulation also being consistent with respondent's Paragraph 14 of respondent's Answer.

* * * * *

Mr. Heimann: I'm not sure if the record shows whether Mr. McGraw has stipulated or agreed to my last stipulation.

Mr. McGraw: I have not and one or two comments there. We believe that that is a fair statement. So far as we know, the company did discharge him at our request and for no other reason. If there are any other reasons, we don't know of them and with that qualification we are willing to accept the stipulation.

Mr. Heimann: That is satisfactory. [23]

The next stipulation, Pense instituted appropriate grievance procedures over his discharge under

the terms of the contract. A full hearing was afforded to all parties and the decision in the grievance procedure was adverse to Pense. The sole issue considered in the grievance procedure was whether Pense's discharge was warranted under the union security clause of the contract then in effect which I will offer as G. C. 6. The legality of the union security clause and the disparity, or alleged disparate treatment of Pense were not issues that were considered in the grievance procedure.

Furthermore, the case did not go to arbitration.

Mr. Sawyer: The respondent company so stipulates.

Mr. McGraw: The respondent union believes that that is a fair statement and is willing to accept it. In some respects, I happen to be without knowledge, but I think it really immaterial to the issues here and we have no quarrel with the way it's stated. [24]

* * * * *

Mr. Heimann: At the request of Mr. Sawyer, I am willing to offer and join in the following stipulation, again, without conceding the materiality but as far as my information goes, they are facts and I have no information to the contrary.

The stipulation is that the contract here involved has never been held invalid or illegal by any court, administrative body or governmental agency. At no time has there ever been a request by the respondent union to the respondent company to enforce by discharge or otherwise the provisions of Article 14 of the said contract insofar as referring

to the payment of general assessments. At no time has the respondent company ever been requested to deduct any amount from an employee's pay covering general assessments.

Now, I want to reiterate that I have no knowledge regarding these facts but I have no contrary evidence and am, therefore, willing to stipulate that they are facts.

Mr. McGraw: We accept the stipulation.

Mr. Sawyer: And respondent company [33] accepts the stipulation. [34]

* * * * *

Trial Examiner: I will receive now General Counsel's Exhbits 2, 3, 4 and 5. [36]

[See pages 140-143 for Exhibits 3, 4 and 5.]

* * * * *

Mr. Sawyer: May we assume that as this is accepted that we are stipulating facts in the Complaint to the effect that this contract was in effect during all the time herein mentioned up to and including approximately 1 February 1954?

Mr. McGraw: That is correct.

Mr. Heimann: That is correct.

Mr. Sawyer: We have no objection to the introduction in evidence.

Trial Examiner: The union, I believe, stated no objection?

Mr. McGraw: No objection.

Trial Examiner: General Counsel's Exhibit 6 is received in evidence. [37]

[See pages 144-145.]

* * * * *

Trial Examiner: General Counsel's Exhibit 7 is received in evidence. [38]

[See pages 145-146.]

* * * * *

Trial Examiner: Is there any contention on the part of any of the parties, and I think this might be specifically the General Counsel's if anyone's that the notice which Mr. Pense gave to the union and the company on August 1, 1953, was intended to be a notification of termination of membership rather than just termination of check-off authorization?

Mr. Heimann: There is no such contention on the part of General Counsel. The letter of Mr. [40] Pense, I think, is clear that it was intended only as revocation of the check-off authorization and we do not contend that any other interpretation should be put on it.

Trial Examiner: Do I understand the union to be in agreement?

Mr. McGraw: We certainly accepted and acted on this as though it was exclusively restricted to stopping the deduction of the dues and not to cancel the membership. We consider it as a written document sufficient and specific and pointed enough to where it could have no other meaning.

Mr. Heimann: In this connection, Mr. Examiner, in order to eliminate any misleading inference which might arise from my mentioning of the date of the receipt by the union of the revocation of Mr. Pense, I have stated that and it has been stipu-

lated that the revocation was received by the company on August 6th and by the union on or about August 6th and, in any case, before August 15. The reason that I mentioned that date is that the check-off authorization itself provides for its revocation, among other things, by written notice to the company.

Trial Examiner: That is a matter of evidence I assume you will introduce.

Mr. McGraw: The language on this check-off authorization is spelled out in the contract and follows Section 7, Page 27 and carries over to Page 28 of General Counsel's Exhibit [41] No. 6.

* * * * *

CHARLES E. PENSE

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

* * * * *

Q. (By Mr. Heimann): Mr. Pense, at the time you executed and mailed the revocation of your check-off authorization, was it your intention to revoke your check-off authorization or was it your intention to withdraw from the union?

A. Purely to revoke my check-off deduction because of extreme financial straits that I found myself in at that time.

I had no intention of withdrawing from [120] the union even though the same clause would have

(Testimony of Charles E. Pense.)

given me the choice. I could have written one letter as well as the other. [121]

* * * * *

Mr. Heimann: I would state that that is not my position that any assessments were included in that amount.

* * * * *

Trial Examiner: On the record.

Mr. McGraw: As a result of our discussion, I believe the parties are in agreement that under the union rules and laws that Mr. Pense in offering $17.50, if he had been accepted would have actually have received credit for initiation fee of $7.00, the equivalent of two months' dues, and the balance would either have been refunded or given to his credit for dues in advance. That the amount is determined by our rules and the decision as to whether or not he returns to membership is controlled by a vote of the membership.

Trial Examiner: Are you joining in that stipulation?

Mr. Heimann: Yes, I think I can.

Mr. Sawyer: I know nothing about it. I have no evidence to the contrary.

Trial Examiner: There is one question I'd like to ask. [126] From what I have heard, I would assume, and you can correct me if I am wrong, that the union does not take the position that there was anything wrong with Mr. Pense's application for reinstatement by virtue of the fact that he did not again tender the same amount?

Mr. McGraw: No, in fact, at the time the union acted on Mr. Pense's application, it had no money pending and was not insisting on any. It had already returned the offer and it was making no condition that it wasn't acting on the application unless a tender was accompanying it.

That was not an issue, and to the best of my knowledge, was given no consideration whatsoever. The understanding, I think, was clear that if he was accepted he would pay the proper amount. I don't think anyone questioned either his intentions or his ability to pay.

So far as I know it had no part in the proceedings at any stage. [127]

* * * * *

Mr. McGraw: I now offer a stipulation a copy of which has been given the reporter and request that it be copied into the record with the corrections which are noted on it which occurred because of our off the record discussion.

Trial Examiner: Will you copy it in at this point?

Stipulation

Lodge #1125, IAM, has been the recognized bargaining agent for the production and maintenance employees of the Consolidated Vultee Aircraft Corporation in its San Diego operations for more than ten years.

What is now the Pomona Division or the Guided Missile Division of the Company was first formed as a department or part of the San Diego Division in 1951.

By March, 1951, this Division was so clearly distinguishable from the other operations of the Company in San Diego that the Company and the International Association of Machinists executed a separate labor agreement for the [133] Guided Missile Division effective March 1, 1951. This contract was succeeded by a labor agreement dated December 24, 1951, and thereafter by a labor agreement dated December 16, 1952, now in evidence and identified as General Counsel Exhibit #6.

Later the work and the people who were doing the work in San Diego were moved to the present location in or near Pomona. Following this move and the location of work, the IAM established Lodge #1254 and transferred the affected membership from Lodge #1125 to Lodge #1254 as of October 1, 1952.

The first agreement between the IAM and the Company for the Guided Missile Division which was effective March 1, 1951, contained the same "Union Security" clause as that contained in the then current labor agreement between the Company and Lodge #1125, IAM, for the other production and maintenance employees in San Diego.

This "Union Security" clause provided in Article XIV, Section 1, and we quote:

"The Company, for the convenience of the Union and its members, agree to deduct from the pay of those employees who execute the form as set forth in Section Two of this Article and are in the bargaining unit, initiation fees, monthly dues, and general assessments levied by the International

Association of Machinists, [134] in accordance with the constitution and by-laws of the Union, and upon presentation to the Company of the fully executed authorization card as set forth in Section Two of this Article."

Membership in the Union as a condition of employment was not provided for in any form by the labor agreement. The particular language quoted above was first adopted by the parties in the agreement signed August 16, 1948.

The present language governing union security was first contained in the agreement now in evidence as General Counsel Exhibit #6. [135]

* * * * *

Trial Examiner: What is your reason for wanting this in, Mr. McGraw?

Mr. McGraw: Essentially so that somebody back in Washington and you won't think we are withholding something and there is some vital gap in here. The purpose, however, for which it is best suited, I think, Mr. Trial Examiner, goes to the point that this does show for whatever it is worth and I grant you questionable worth is to show what the parties had done with particular reference to this thing of deducting assessments in the past and as a means of showing how the parties got in this way to the contract which is now in issue.

I think we need a rather complete record on this particular point so that no one can have cause to think we are withholding anything or that there is something that doesn't meet the eye.

Trial Examiner: Are you so stipulating, Mr. Sawyer?

Mr. Sawyer: I have not, of course, proofread that quoted wording in there, I mean the quoted wording from the so-called union security clause.

I understand the parties will check that with the contracts and if there happens to be a typographical error that will be changed. Otherwise, I so stipulate that the matters and things set out in the stipulation as presented [136] are, in fact, our knowledge of the situation.

Mr. Heimann: I would like to state, if I may, I have no information to the contrary. I do have, I believe I do have some source whereby I may check the accuracy of the information. If I should determine that something is inaccurately stated I would like to reserve the right to rescind my stipulation.

Otherwise, with that understanding, I'm willing to stipulate to the facts again urging my objection on the basis of immateriality and irrelevance.

Trial Examiner: I agree, it is not pertinent to the issues at hand. On the other hand, as background, I don't think it does any harm either so I will receive the stipulation.

Mr. McGraw: Thank you. [137]

* * * * *

Mr. Heimann: The reason that I'm offering this document is to point out Article XIV of this agreement which now omits in all its parts the words "and assessments," or "and general assessments," whatever the words were in G. C. No. 6.

Trial Examiner: Any objection to the receipt in evidence?

Mr. McGraw: No objection.

We will certainly agree with counsel for the Board that we took the word "assessment" out.

Trial Examiner: There being no objection, General Counsel's Exhibit 9 is received in evidence.

(Thereupon the document above-referred to was marked General Counsel's Exhibit No. 9 and was received in evidence.) [138]

[See pages 147-148.]

* * * * *

Trial Examiner: You are through now, are you, Mr. Heimann?

Mr. Heimann: Yes.

* * * * *

Mr. McGraw: At this time, Mr. Trial Examiner, I would [139] like to move to dismiss the case against the respondent union and in all of its particulars on the grounds the General Counsel's case carried no proof of allegations of wrong doing made in the Complaint.

Trial Examiner: Do you wish to argue that?

Mr. Heimann: Mr. Examiner, if I argue it, it really would amount to my final argument. However——

Trial Examiner: Before you say anything, I want to ask Mr. McGraw whether he is directing his motion to all aspects of the General Counsel's case.

Mr. McGraw: As it affects the union, yes, sir.

Trial Examiner: I don't believe I will ask for argument. I will deny the motion at this time. [140]

* * * * *

JOHN M. KING

a witness called by and on behalf of the Respondent Union, being first duly sworn, was examined and testified as follows:

Direct Examination

* * * * *

Q. (By Mr. McGraw): Mr. King, where are you employed?

A. I am employed by Lodge 1254, I.A.M.

Q. What capacity?

A. Financial secretary.

Q. How long have you been employed there?

A. Full time since August 1. On a part time basis from——

Trial Examiner: August 1, 1953?

The Witness: Yes, '53. Part time basis from 1952, January of 1952. [230]

* * * * *

Q. Now, do you know of your own knowledge as financial secretary of the lodge whether or not any employees, any employed employees in the Pomona Division would on occasion be sent to San Diego to work and come back up here so that they were between the two places?

A. Yes, as of October 1. [234]

Q. Of what year?

(Testimony of John M. King.)

A. Of 1952. Convair, the Grand Lodge had transferred approximately 560 people into Lodge 54. It was not handled in the process generally known as a transfer slip.

All the records in San Diego were sent up to me at that time. If they had been done in the regular procedure, the errors would have been picked up in the recording in San Diego. Otherwise, when I received it, whatever error was in the account, I had to take it as it was and work it out at a later date which I did.

There were several accounts, numerous accounts, I should say, that weren't worked out until almost until about March or April of this year.

Q. Now, did this movement of personnel between San Diego, or Pomona and San Diego create any particular problems for the financial secretary in keeping the record?

A. Yes, it did because even though their accounts were transferred to Lodge 1254, the people remained in San Diego. Those that were paying cash in San Diego, I had to depend on the Grand Lodge Representative bringing their books up to me.

Then, also, a party would come to be transferred to Pomona. If he was a cash payment, I had no knowledge until such time as I saw the man.

Q. During this time and while there was still

(Testimony of John M. King.)

some traffic with part of the Guided Missile Division being in San Diego [235] and part of it up here in Pomona, during this time did you have any difficulty from the company in getting accurate information as to who was working and where they were working?

A. Yes, I did. I received two entire payroll deduction sheets. One would be from San Diego, the employee remaining in San Diego. The second one would be the employee in Convair Pomona. And in the time between—in order to get the picture I better think a moment.

By the time that the deduction sheet was made up and I received it, the party that was in San Diego had been transferred up to Pomona and, likewise, the man that had been in Pomona was transferred back to San Diego. [236]

* * * * *

Q. As part of your duty, are you required to send arrearage [240] notices? A. Yes, it is.

* * * * *

Q. (By Mr. McGraw): Do you know whether or not you sent any arrearage notices to Mr. Pense?

A. Yes, I did. [241]

* * * * *

Q. Do you know how many arrearage notices that you sent to Mr. Pense?

A. Three, I believe.

* * * * *

(Testimony of John M. King.)

Q. What were the dates on which they were sent?

A. October 19, 1953; November 10, 1953; November 27, 1953. [242]

* * * * *

Mr. McGraw: I intend to have them identified and offer them in evidence, the one dated 10-19-53 to be Respondent Union's Exhibit 2, the one for 11-10-53 to be Respondent Union's Exhibit 3, and the one for 11-27-53 to be Respondent Union's Exhibit 4.

(Thereupon the documents above referred to were marked Respondent Union's Exhibits Nos. 2, 3 and 4, inclusive, for identification.)

Mr. Heimann: I am willing to stipulate that the originals of the arrearage notices, notice of arrearages [243] that have been identified as Respondent Union's Exhibit 2, 3 and 4 were sent by the union to Mr. Pense on or about the dates appearing the right hand corner thereof and were received by Mr. Pense in due course of mail.

Mr. McGraw: Thank you kindly, counsel. We accept the stipulation.

We now offer these in evidence and request permission to substitute photostatic copies for them.

Mr. Heimann: No objection.

Trial Examiner: Respondent Union's Exhibits 2, 3 and 4 are received in evidence.

(The documents heretofore marked Respondent Union's Exhibits Nos. 2, 3 and 4 for identification were received in evidence.) [244]

* * * * *

GENERAL COUNSEL'S EXHIBIT No. 3

Mr. H. D. Filloon December 7, 1953
Manager of Industrial Relations
Consolidated Vultee Aircraft Corp.
Pomona Division
Pomona, California

Subject: Union member in violation of Article XIV Section I, as a Condition of Employment.

Dear Mr. Filloon:

The International Assn. of Machinists Guided Missile Lodge 1254 is hereby notifying Consolidated Vultee Aircraft Corp. Pomona Division, co-signers of the present contract between the union and the company; that former Union Members, D. M. Ainsworth Department 25 Clock Number 10341 and C. E. Pense, Department 27 Clock Number 70053, have not complied with said contract, as a Condition of Employment. Therefore in compliance with the Constitution of the International Assn. of Machinists have been dropped from this local.

The union will await your compliance to the above subject set forth.

Very truly yours,

/s/ JOHN M. KING,
Financial Secretary
Lodge 1254, I.A.M.

cc: Walter Black

(Copy)

GENERAL COUNSEL'S EXHIBIT No. 4

(Letterhead of International Assn. of Machinists)

Mr. H. D. Filloon December 17, 1953
Manager of Industrial Relations
Consolidated Vultee Aircraft Corp.
Pomona Division
Pomona, California

Subj: Employees in violation of Article XIV Section I, as a condition of employment.

Dear Mr. Filloon:

The International Association of Machinists Guided Missile Lodge #1254 is hereby notifying Consolidated Vultee Aircraft Corp., Pomona Division, co-signers of the present contract between the Union and the company, that former Union Members, D. M. Ainsworth, Department 25, Clock Number 10341 and C. E. Pense, Department 27, Clock Number 70053, are not in compliance with Article XIV of our Agreement in that they have been

dropped from membership of our Association because of non-payment of dues in accordance with the Constitution and By-Laws of our Union.

We, therefore, request the company to immediately terminate the above employees in accordance with the terms of our Agreement.

Very truly yours,

/s/ JOHN M. KING,
Financial Secretary to
Lodge #1254

JMK:sh
cc: Walter Black

This is an exact copy of a carbon copy.

GENERAL COUNSEL'S EXHIBIT No. 5

Guided Missile Lodge 1254
International Association of Machinists A.F. L.

Pomona, California
January 15, 1954

Mr. H. D. Filloon
Manager of Industrial Relations
Consolidated Vultee Aircraft Corp.
Pomona Division
Pomona, California.

Dear Mr. Filloon:

In regards to the letter sent to you dated December 17, 1953 in which Guided Missile Lodge 1254, International Association of Machinists asked you

to terminate former Union Members, D. M. Ainsworth and C. E. Pense as a Condition of Employment in accordance with the terms of our Agreement.

I wish to advise you that action was taken by the membership of this lodge at the last meeting held January 14, 1954 and the decision set forth which is in accordance with the Constitution and By-Laws of our Union as follows;

D. A. Ainsworth, Application accepted and Reinstated as a member in good standing. Termination Request Cancelled.

C. E. Pense, Application rejected by the membership. Termination requested as per letter dated December 17, 1953.

Very truly yours,

/s/ JOHN M. KING,
Financial Secretary to
Lodge #1254

cc: Walter Black

This is to certify that the above is an exact copy of a carbon copy.

GENERAL COUNSEL'S EXHIBIT No. 6

Agreement between Consolidated Vultee Aircraft Corporation, Guided Missile Division and International Association of Machinists, Guided Missile Lodge No. 1254, Effective December 16, 1952.

* * * * *

Article XIV.

Union Security

Section 1. Any employee within the bargaining unit who, on the effective date of this agreement, is a member of the Union in good standing, and each employee within the bargaining unit who thereafter becomes a member of the Union shall pay while on the Company's active payroll and a member of the Union, initiation fees, monthly dues and general assessments levied by the International Association of Machinists, Guided Missile Lodge No. 1254, in accordance with the constitution and by-laws of the Union as a condition of employment while in the bargaining unit, provided that in no event shall the initiation fee, monthly dues or general assessment exceed the amount specified in the constitution and by-laws; and each employee who, after the effective date of this agreement, is separated from the bargaining unit and who at such time is subject to the provisions of this section shall, upon rehire within the bargaining unit, again pay regular dues to the Union commencing with the date of rehire; provided further, that any employee

may withdraw from membership in the Union by notifying the Union and the Company by registered mail, postmarked between August 1 to August 15 of the then currently effective yearly period.

Section 2. No employee, as a condition of employment while in the bargaining unit, shall be required to pay while on the Company's active payroll any Union membership dues, fees or general assessments covering any period during which the employee was not in the bargaining unit or was not on the Company's active payroll.

Section 3. Any employee subject to the provisions of Section 1 above, who is thereafter separated from the bargaining unit, shall upon his reemployment in a job within the bargaining unit again pay membership dues to the Union in accordance with Section 1 above, unless such employee has withdrawn from membership with the Union in accordance with this Article.

* * * * *

GENERAL COUNSEL'S EXHIBIT No. 7

International Association of Machinists
[Seal]

Constitution

Revised by the Committee on Law as recommended by the Twenty-Third Convention of the Grand Lodge of The International Association of Machinists, held in Kansas City, Missouri, Septem-

ber 8 to 19, 1952, and thereafter adopted by referendum vote in November, 1952, effective January 1, 1953, and amended by referendum vote in January, 1953, effective April 1, 1953.

Grand Lodge
International Association of Machinists
Machinists Building
Washington 1, D. C.

* * * * *

Article E

* * * * *

Membership Cancelled

Sec. 14. Delinquency for 3 months in the payment of dues or assessments shall automatically cancel membership and all rights, privileges and benefits incident thereto. The period of good standing membership of members whose membership has been cancelled for delinquency, or other cause shall date from their last reinstatement, as shown by the G. L. records, and their rights, privileges and benefits under the provisions of this Constitution shall attach and date from their last reinstatement, as though they had never before held membership in the I.A.M.

* * * * *

GENERAL COUNSEL'S EXHIBIT No. 9

Agreement between Consolidated Vultee Aircraft Corporation, Pomona Division and International Association of Machinists, District 120, Guided Missile Lodge 1254, Effective February 1, 1954.

* * * * *

Article XIV.

Union Security

Section 1. Any employee within the bargaining unit who, on the effective date of this agreement, is a member of the Union in good standing, and each employee within the bargaining unit who thereafter becomes a member of the Union shall pay while on the Company's active payroll and a member of the Union, initiation fees and monthly dues of the International Association of Machinists, District 120, Guided Missile Lodge No. 1254, in accordance with the constitution and bylaws of the Union as a condition of employment while in the bargaining unit, provided that in no event shall the initiation fee or monthly dues exceed the amount specified in the constitution and bylaws; and each employee who, after the effective date of this agreement, is separated from the bargaining unit and who at such time is subject to the provisions of this section, shall, upon rehire within the bargaining unit, again pay regular dues to the Union commencing within the date of rehire; provided, further, that any employee may withdraw from membership in the

Union by notifying the Union and the Company by registered mail, postmarked between December 1st to December 15th of the then currently effective yearly period.

Section 2. No employee, as a condition of employment while in the bargaining unit, shall be required to pay while on the Company's active payroll any Union membership dues or fees covering any period during which the employee was not in the bargaining unit or was not on the Company's active payroll.

Section 3. Any employee subject to the provisions of Section 1 above, who is thereafter separated from the bargaining unit, shall upon his reemployment in a job within the bargaining unit again pay membership dues to the Union in accordance with Section 1 above, unless such employee has withdrawn from membership with the Union in accordance with this article. * * * * *

CERTIFICATE

This is to certify that the attached proceedings before the National Labor Relations Board for the 21st Region in the matter of: General Dynamics Corporation, et al. and Charles E. Pense, an individual. Case No. 21-CA-1911, 21-CB-561, Los Angeles, California, July 12, 13, 1954, were had as therein appears, and that this is the original transcript thereof for the files of the Board.

ACME REPORTING COMPANY,
Official Reporters
By ADELE HENNINGSEN,
Field Reporter